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IN THE

SUPREME COURT OF ILLINOIS

JANUARY TERM, A. D. 1956.

PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error, vs. VINCENT CIUCCI, SR., Plaintiff in Error.	Writ of Error to the Criminal Court of Cook County. Honorable Arthur J. Murphy Judge Presiding.

ABSTRACT OF RECORD.

Part I.

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IN THE

SUPREME COURT OF ILLINOIS

JANUARY TERM, A. D. 1956.

PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error, vs. VINCENT CIUCCI, SR., Plaintiff in Error.	Writ of Error to the Criminal Court of Cook County. Honorable Arthur J. Murphy Judge Presiding.

ABSTRACT OF RECORD.

Part II.

BILL OF EXCEPTIONS.

Rec. Page

1 Indictment No. 54-839.
Charge: Murder.
Bill of Exceptions—January 3, 1955.
Before the Honorable Arthur J. Murphy, Judge.
Present:

Hon. John Gutknecht State's Attorney of Cook County by Mr. Samuel Papanek and Mr. Joseph McGovern, Assistant State's Attorneys.
Appearing for the People.

Mr. James J. Doherty and
Mr. Arthur J. O'Donnell.
Appearing for the Defendant.

2 Mr. Doherty: Your Honor, this is a motion on the plea of double jeopardy, and this is a motion for consolidation, and motion to exclude other deaths.

(Which motion to dismiss on grounds of former jeopardy is in words and figures as follows, to wit:)

MOTION TO DISMISS ON GROUND OF FORMER JEOPARDY.

Now comes the defendant, Vincent Ciucci, Sr., by his attorneys, Arthur J. O'Donnell and James J. Doherty and asks this honorable Court to enter an order herein forthwith dismissing the above entitled cause with prejudice, and alleges as grounds therefore, the following, to-wit:

3 1. That the defendant was found guilty under indictment No. 54-841, entitled The People of the State of Illinois versus Vincent Ciucci, Sr., and was sentenced to 45 years in the Illinois State Penitentiary.

2. That, antecedent thereto, the defendant was found guilty under indictment No. 53-2415, entitled The People of the State of Illinois versus Vincent Ciucci, Sr., and was sentenced to 20 years in the Illinois State Penitentiary.

3. That the alleged facts and evidence upon which the instant indictment No. 54-839 is based, are the same; that a trial in this instant case will be a retrial of the above and foregoing two named indictments, viz: 54-841 and 53-2415; that a trial in the instant case would place the defendant in jeopardy twice for the same offense, in violation of his Constitutional

rights, as guaranteed him by the Constitution of the State of Illinois and by the 5th Amendment of the Constitution of the United States of America.

Wherefore, defendant prays that this Honorable Court enter an order herein forthwith dismissing the above entitled cause with prejudice, and for such
4 other and further relief in the premises that equity and justice may require and to the Court may seem meet.

(Signed) Vincent Ciucci, Sr.

5 MOTION.

Now comes the defendant, Vincent Ciucci, Sr., by his attorneys, Arthur J. O'Donnell and James J. Doherty, and moves this Honorable Court to forthwith enter an order herein consolidating indictment No. 54-840 with the above captioned indictment No. 54-839 for trial, in support of which motion, defendant presents to the Court his verified petition.

Arthur J. O'Donnell and
James J. Doherty
By (Signed) James J. Doherty
Attorneys for the Defendant.

5A MOTION.

Now comes the defendant, Vincent Ciucci, Sr., by his attorneys, Arthur J. O'Donnell and James J. Doherty and move this Honorable Court to forthwith enter an order that upon the trial of this cause all evidence or

references to death, other than the death which forms the basis of this indictment, be excluded.

Arthur J. O'Donnell and
James J. Doherty
By (Signed) James J. Doherty
Attorneys for the Defendant.

6 Mr. Doherty: I think we should argue the motion of former jeopardy first.

The Court: Let the record show that the State is proceeding on Indictment 54-839.

7 Mr. Papanek: Counsel were appointed at the defendant's request before Her Honor, Judge Tucker.

(Which petition for appointment is in words and figures as follows, to-wit:)

PETITION.

1. This petitioner, Vincent Ciucci, Sr., represents unto this Honorable Court that he is the defendant in the above numbered indictment for murder.

2. That he engaged the services of Arthur J.
8 O'Donnell and James J. Doherty to represent him and defend him in the above indictment now pending in the Criminal Court of Cook County; that he now finds himself without any funds; that he is indigent and is unable to pay counsel for his defense.

Wherefore, this defendant, your petitioner herein, prays that this Honorable Court appoint said Arthur J. O'Donnell and James J. Doherty to represent and defend him in the above indictment, pursuant to the Statute of the State of Illinois.

(Signed) Vincent Ciucci, Sr.

9 (Vincent Ciucci states that he has read the petition he signed to appoint Arthur J. O'Donnell and James J. Doherty to represent him in Indictment 54-839 and that he is without funds to pay for counsel; that these two lawyers are his choice; that he is satisfied to proceed with these two men. He further states that Mr. Doherty has represented him previously.)

10 (Mr. Doherty states that he represented the defendant in Indictments 53-2415 and 54-841, both entitled The People vs. Vincent Ciucci, Sr.; and that Mr. O'Donnell represented the defendant in Indictment 54-839 People vs. Vincent Ciucci which ended in a mistrial.)

The Court: The order will be entered.

11 The Court: You may proceed.

Mr. Doherty: In this matter of the People of the State of Illinois versus Vincent Ciucci, Sr., I would like to bring to the Court's attention that under indictment 53-2415, entitled, The People of the State of Illinois versus Vincent Ciucci, the defendant was tried for the murder of his wife, Anna Ciucci, and at the time, in proving the corpus delicti, or the death of his wife, Anna Ciucci, the State also showed that one Angeline Ciucci and Virginia Ciucci, Jr., were alive on a certain day, antecedent to December 5, 1953 and that they showed by the testimony of one Alex Carbanera that those people were dead subsequent to December 5, 1953.

During the course of the trial, they put Dr. Kearns on the stand and had him testify as to the cause of

12 death, not only of Anna Ciucci, but all the other victims, and in that case, the defendant was found guilty

and sentenced to 20 years in the Illinois State Penitentiary.

During the course of that trial, in cross examining Dr. Kearns, Mr. Marciniak, Julius W. Marciniak, who who was one of the defense counsel in that case, cross examined Dr. Kearns and secured from him under cross examination, the admission that Anna Ciucci and the others had met their death primarily from carbon monoxide intoxication, and during the course of redirect examination, it was brought out their death was accelerated by the gunshot wounds. Then a new indictment was brought out.

This boy was indicted under indictment 54-841 and tried under that indictment, which indictment accused him of causing the death of Angeline Ciucci, by burning, carbon monoxide intoxication and by shooting, and by a combination of all three.

The Court: Let me get those names straight, Mr. Doherty.

Mr. Doherty: Yes. Anna is the deceased, his wife.

The Court: And that trial has been had?

Mr. Doherty: That's correct, your Honor, under
13 indictment 53-2415.

The Court: And then Angeline is a child?

Mr. Doherty: Angeline, that is a daughter, female child about the age of six.

The Court: And that trial has been disposed of?

Mr. Doherty: That's correct, your Honor.

The Court: What was that number?

Mr. Doherty: 54-841.

The Court: And the current case, 54-839, involves what child?

Mr. Doherty: The death of Vincent Ciucci, Jr.

The Court: 54-839.

Mr. Doherty: There is one pending, your Honor, which is No. 54-840, involving the death of one Virginia Ciucci.

The Court: All right, you may proceed.

Mr. Doherty: During the course of the trial of this 54-841, the State, in proving the corpus delicti showed the death of Angeline Ciucci, showed that she was alive on a certain date prior to December 5th, and showed she was dead on a certain date subsequent thereto, and the same with all the others. And they introduced testimony relative to establishing the corpus delicti of the crime of arson; that is, the setting
14 of the premises on fire, and in that case the jury sentenced this boy to 45 years in the State Penitentiary. He was found guilty.

Now, in support of our motion, we respectfully direct the attention of this Honorable Court to the case of Murphy versus the United States, 285 Federal 801, Certiorari denied, 43 Supreme Court, 562. We do not have that case with us. In that case it was promulgated that former jeopardy is determined by the evidence and not by the theory. In keeping with that, of course, you see why we have relied upon the evidence as stated to you thus far.

And in the case of the People versus Garman, 411, 279, an Illinois case—

The Court: What is that citation?

Mr. Doherty: People versus Garman, 411 Illinois 279. In that case, your Honor, the Plaintiff in Error, under various counts of the indictment, was found

not guilty of driving under the influence of liquor as charged in count one, and not guilty of involutary manslaughter as charged in counts six, seven and eight. He was found guilty of reckless homicide by the jury, and he raised the plea of former jeopardy, and in that case, the Court held—

15 The Court: That was within one indictment, wasn't it; various counts?

Mr. Doherty: That's correct. In that case, the Court held that the defense of former jeopardy was not available to him for the reason that "where two offenses, though arising from the same act, are separate and distinct in law, the defense of former jeopardy is not available regardless of how closely they are connected in point of fact, and, as the two offenses of reckless homicide and involuntary manslaughter involve some different elements in their required allegations, all claims of double jeopardy are removed."

In this case, he is charged with murder. Now, if he's guilty of committing the crime of murder, there has been no showing in any of the evidence thus far, of any distinction in point of time of those deaths. There is no showing who died when. There is no time of death in any of them, so that this transaction constitutes no offense against the peace and dignity of the People of the State of Illinois. That is our contention.

It is the negative corollary arising from that, which we ask your Honor to please peruse before you rule.

16 Mr. Doherty: We have an Illinois case People vs. Flaherty, 396 Illinois 304; opinion filed January 22, 1947, rehearing denied March 17, 1947.

Now, in this case, briefly, your Honor, a man was accused of robbery in an indictment after he had been acquitted of the crime of burglary and larceny, all arising out of the same transaction, and the Court held that there are various elements in one which are not present in the others, and therefore the plea of former jeopardy would not lie.

The same again is made in this case, the crime of murder. There is no distinction, and therefore the reasoning of the Court would have to be diametrically opposed to this case.

The Court: Again you have a negative reasoning?

Mr. Doherty: Negative corollary, yes, your Honor, which is based on the facts of logic.

That's all we have on this motion. Thank you very much.

17 The Court: All right, Mr. Papanek.

Mr. Papanek: Your Honor, there is a case that has been decided, that is squarely in issue with the matter of the evidence, as to two crimes going into the same trial, two charges of murder. There were two separate indictments of murder, where the evidence as to both deaths and the circumstances of both deaths was admitted in evidence on the two trials.

I am referring now to The People versus Murphy, which was reported in 276 Illinois Supreme. In the Murphy case, your Honor—

The Court: What is the page number?

Mr. Papanek: Starts at page 304. In this instance, I would like to just read at the beginning of the opinion on page 305.

"Plaintiff in error and Milton Armstrong were convicted of murder in the Circuit Court in Ver-

million County of two separate indictments. The first charged them with the murder of George Roumas, and they were each sentenced on the verdict in that case for a term of 99 years. The second indictment charged them with the murder of Louis Roumas, and in that case, Milton Armstrong's punishment was fixed at 99 years in the penitentiary and the sentence of plaintiff in error
18 was the death penalty".

And reading from page 321, here at the bottom of the page, we have the language of the Supreme Court in this instance;

"There is no merit in the contention that the Court erred in permitting the State to introduce evidence concerning experiments made in fiting the blue-steel revolver into the wounds on the body of George Roumas. The grounds for the objection are that it called the jury's attention to the fact that a double murder had been committed, and because plaintiff in error was not present. The evidence in reference to the killing of George Roumas was inseparable from the evidence in relation to the killing of Louis Roumas and was therefore admissible as a part of the res gestae."

Now, in addition to this case, it goes back into citing the case of Hickman versus The People, 137 Illinois, Page 75; Lindsay versus The People, 104 Illinois, 248; Ferris versus The People, 129, page 521.

Now in each of these cases, your Honor, the courts have held this: That if there is more than one death, even in an automobile accident—and that is The People
19 versus Allen—each of the circumstances of the death of any one or each of the victims who died as a result

of the acts of the defendants, were a separate and distinct case.

And for that reason, and in the language of the Murphy case, which says that they are inseparable, but each are a separate and distinct offense, and that testimony is admissible as to the circumstances as part of the res gestae in each of the trials—and that has been the argument with reference to the testimony of the circumstances and the cause of death of each of the four victims in this case, and to logically understand that, your Honor must be familiar with what our evidence will show in this case.

The evidence will show, your Honor, that at about 12:25 A.M. on December 5th, the four people were living, the mother and the three children. At 2:00 A.M., these four people, or shortly after 2:00 A.M., these four people were removed from the premises where they were with this defendant, all of them burned and the testimony will show each of them having a bullet into the brain, of each of the four of them, so that the occurrence is limited there to that hour and a half, and in the same place. They aren't separate and distinct offenses in the sense that this happened in different places and at different times, so that the testimony of one wouldn't be admissible in the trial of another, but they are so interwoven by the circumstances as to be all logically a part of the testimony of each of the four. For that, only the defendant can blame himself as to the circumstances of the death of the four people. We had no control over that.

But that being the situation and that being part of the res gestae in each of those cases and the death

charging this defendant with the crime of murder involving each of the people, is a separate and distinct offense, and because of that, it couldn't be a plea of former jeopardy sucessfully interposed in this because of the rulings of our courts.

Now, this again, your Honor, would take care of the petitions which have been filed, and it all is so interwoven, former jeopardy and asking for a consolidation of the causes.

And by the Murphy case ruling, our position is that these are all separate and distinct cases and couldn't be consolidated unless it was by agreement and the
21 State very definitely refuses to stipulate to the consolidation of the evidence in this case.

And also, that the motion to keep out any evidence of the deaths of the other people has been decided in this Murphy case, 276, Illinois.

Now, there were other cases, your Honor, in which the matter of the plea of double jeopardy was raised; one is the People versus Allen, reported in 368 Illinois and it is reported on page 378.

This was an automobile case, your Honor.

The Court: Three what?

Mr. Papanek: 368 Illinois, page 378.

The Court: Automobile accident?

Mr. Papanek: Yes. This case resulted in the death of two people. There was an indictment charging the defendant with having caused the death, unlawfully caused the death of one of these deceased, and the defendant was discharged in that case because of the 4th term act, and then the State went in and indicted him on the second victim's death, charging him with

the crime in that case, and the plea, of course, was that because of his previous adjudication, because of the 4th term act, that discharges him from any possible
22 action by the State. The Supreme Court said no, that these are separate and distinct cases, and this is the language of the Court,

> "Two or more distinct offenses may grow out of the same transaction or act, and the rule that a person cannot be twice put in jeopardy for the same offense has no application where two separate and distinct crimes are committed by one and the same act. When a former acquittal or conviction is pleaded in bar of a subsequent prosecution, the test is whether the facts charged in the later indictment would, if found to be true, have justified a conviction under the earlier indictment."

In this case, they said it was separate and distinct and because of that, the State was entitled to try the person on the second death, arising out of the same automobile accident, your Honor.

The Court: Anything else, Mr. Doherty?

Mr. Doherty: It would appear, just from the discussion, that the State wants the cake and eat it, too. They talk in one breath about these being separate and distinct acts, and then cites the same case on the consolidation of the two indictments. They seek to
23 answer all three of our petitions by the same argument. Either they are separate and distinct acts or they are not. That's what the whole thing is, isn't it? Then he cites a case, an automobile accident, where in one split second, somebody does something which constitutes a crime. How can you put four bullets in four people's heads in the same split second? You

couldn't possibly do that and this Court will take judicial notice of that fact. Is that right?

That's all we have. We have cited all the law we possibly can in this case. We have exhausted our legal resources and ask your Honor to take it under advisement.

The Court: Well, the Court will make a ruling. The motion will be denied.

Mr. Doherty: We take an exception to your Honor's ruling, please.

The Court: The motion to dismiss in Indictment No. 54-839 because of double jeopardy is denied.

Mr. Doherty: Exception.

The Court: The next motion, Mr. Doherty?

24 Mr. O'Donnell: Your Honor, this petition, on behalf of the defendant, Vincent Ciucci, Sr., in the matter of indictment No. 54-839, the defendant states that he is the defendant accused of murder in this case. He also states that he is the defendant accused of murder in Indictment 54-840, which is now presently pending in this Court.

He further states that the indictments 54-839 and 840 arose out of the same act and same transaction; that the indictments should be consolidated for trial as one offense, otherwise the defendant can be tried endlessly and indefinitely on these various offenses.

Counsel for the prosecution has stated that the facts and circumstances surrounding this particular event are inseparable, that it is almost impossible to separate the acts or events that took place. Therefore, we feel that his argument is in strong support of our petition and motion for consolidating the cases.

It should be further brought out that the defendant in this case is without funds. He has been forced to trial three times already, as a result of the attitude of the State, that he is a poor person unable to procure counsel, counsel has to be appointed for him.

We feel that this is a violation of his Constitutional rights and we would like to make a motion to have indictments 54-839 and 54-840 consolidated.

The Court: Do you have anything to say, Mr. Papanek?

Mr. Papanek: I think what I have pointed out, in the language of the Murphy case, answers that, as having been decided by our Supreme Court.

The Court: The State is objecting to it, then?

Mr. Papanek: Yes, your Honor.

The Court: Motion for consolidation of indictments 54-839 and 54-840 is denied.

Mr. O'Donnell: May we respectfully take an exception to the ruling?

The Court: If there is anything you want in the record, speak up.

Mr. Doherty: We don't want to take too much of the Court's time and interrupt Mr. Papanek, because we will certainly interrupt him if he mentions the deaths of the other people, but we can get it into the record here, I think, on this motion, whereby we are asking that your Honor enter an order requiring the State to mention no death, other than the death which forms the basis of this indictment.

The Court: What do you have to say, Mr. Papanek?

Mr. Papanek: It is the same situation that I pointed out, in the matter of the case of The People versus Murphy, which is so squarely in point with the particular case on trial before your Honor, in which the Court had held that not only was the evidence of the death of the former—that is, the victim in the former murder conviction admissible, but even as to experiments with a gun outside the presence of the defendant, which surely is a whole lot more than we are asking for in this case.

The Court: Well, the Court feels, Mr. Doherty, at this time the motion is a little premature. The Court would like to see the evidence develop and at that time, if you feel that there is any error on the part of the State, in the offering of evidence, in the course of the trial, you may make your motion, so the Court at this time, instead of ruling on your motion—or would you like a ruling on it at this time? The Court suggests you make whatever motions you wish to make, during the progress of the trial.

Mr. Doherty: We have made this motion now.
27 If your Honor is stating for the record that it is premature, then naturally, the mention of the other deaths will be made during the course of the picking of the jury. Then get up and address the prospective jurors and tell them, at least briefly, what the case is about.

Mr. O'Donnell: Rather than interrupt him in every stage.

Mr. Doherty: Perhaps it is premature. If he will assure your Honor that there will be no mention of the other deaths until such time as the jury is

impanelled and sworn in, of course, we would have to agree, that this is premature.

The Court: Well, Mr. Doherty, the Court is not disposed to request either of you to agree to anything in the course of this trial. I think, in the defense of the defendant, you should feel free at any time to make any objections that you think are in order.

Mr. Doherty. Yes.

The Court: I would prefer that you make your motion as you go along as to anything the State may offer. If you wish a ruling, the Court will rule on your motion. The Court feels it is a little premature, it is a situation that—

Mr. Doherty: Hasn't arisen yet.

28 Mr. Papanek: Your Honor, it was because of that that I gave your Honor a thumb-nail synopsis of what the evidence will disclose. I am just saying that is the very basis of the statement by myself as to what the evidence would show in the State's side of the case, with reference to those deaths.

The Court: What I would like to do before we start picking a jury is to examine those two cases you have given me.

Mr. Papanek: Surely.

The Court: Now, have you any other motions you want to make?

Mr. Doherty: No, but in just thinking about it, I feel in this case, your Honor, I think that what I will do in this case is have this order ruled on now and take an exception to it because you see what it will do, it will save interrupting him constantly, because there is going to be numerous times during the course of the trial, whereby it would be

saving the Court's time, saving the State's time and maybe saving us from appearing too obstreperous before the jury, and we do not intend that.

29 The Court: I am assuming you will not. I am quite sure you won't. Don't worry about that. If you wish a ruling, the Court will rule on it and deny the motion.

Mr. Doherty: And we will take an exception to your Honor's ruling. May we have it understood for the record, that each time during the course of the trial that there is a mention of the other deaths, that we are objecting to it, your Honor is overruling it and we are preserving an exception for the record.

The Court: The record may so show.

(And thereupon a recess was taken to the same day, Monday, January 3, 1955, at 2:00 o'clock P.M.)

30 Monday, January 3, 1955
Afternoon session
At two o'clock P.M.

Parties present: Same

(Whereupon the jury was impanelled, sworn, Examined Voir Dire by Counsel for Defense. Twelve jurors not having been accepted, further examination was continued.)

31-32 Tuesday, January 4, 1955
Morning session
At ten o'clock A.M.

Parties present: Same

(Further examination Voir Dire jury, 12 not having been accepted, further examination was continued.)

33 Tuesday, January 4, 1955
Afternoon session
At two o'clock P.M.
Parties present: Same

(Further examination Voir Dire jury, twelve not having been accepted, further examination continued.)

34 Wednesday, January 5, 1955
Morning session
At ten o'clock A.M.
Parties present: Same

(Further examination of jury, twelve not having been accepted. Further examination was continued.)

35 Wednesday, January 5, 1955
Afternoon session
At two o'clock P.M.
Parties present: Same

(Further examination Voir Dire jury, twelve having been accepted by Counsel for People and Counsel for Defendant. Said twelve jurors were sworn, regarding after which an adjournment.)

36 Thursday, January 6, 1955
Morning session
At ten forty-five o'clock A.M.
Parties present: Same

(Whereupon the following proceedings were had outside the presence and hearing of the jury, to wit:

The case was called by the Clerk, and after a short discussion between Court and Counsel, the following proceedings were had within the presence and hearing of the jury:

37 Mr. Papanek:

May It Please Your Honor—Counsel—Jury:

I have the privilege at this time of calling for an open statement. You have now been sworn to try issues of this case. Before we present the witnesses on the State's side of the case, I am permitted to give you an over-all picture of what the entire State's case will show. You have heard the statement made that the evidence in this case is not what the lawyers might say or what you might have heard on the outside of the Court, but it is sworn testimony as it comes from this witness stand, together with the physical exhibits which His Honor permits to go into evidence. And I say for this reason, if I should say anything that should not be borne out by the evidence, disregard it. I assure you, I will say nothing to mislead you as to what the evidence we will produce in this cause will show.

(Motion by Mr. Doherty to exclude witnesses and order of Court for exclusion of witnesses.)

(Mr. Papanek requests that Officer Roy Triner, the investigating officer, be allowed to remain in court. No objections by Defense.)

39 Mr. Papanek:

Now we lawyers in making an opening statement, are stating to you what we have learned from our witnesses and what we expect our witnesses to testify to when they do take the stand as witnesses. When I have completed my opening statement, Counsel for the Defense—if they choose—may make an opening statement as to what they expect this evidence to show in their opinion. We expect the evi-

dence in this case to show that in August, 1944, the Defendant—Vincent Ciucci, married a girl named Anna Turco. We expect the evidence to show that as a result of that marriage, there was born to Anna Turco Ciucci, three children. The oldest of those three children was Vincent Frank Ciucci, who is the Vincent Frank Ciucci named as the deceased in this murder indictment. We expect the evidence to show that the next oldest child was Virginia Ciucci, and that the youngest was Angeline Ciucci. We expect the evidence to show that Anna Ciucci and the defendant, together with the family, resided in the 2500 block of South Western Avenue and that in March of 1951, while he was the father of these three children and while he was married to Anna, the defendant met in a tavern a girl named Carol Amora.

We expect the evidence to show that from March of 1951 the defendant in this cause dated steadily for six months Carol Amora. We expect the evidence to show that in September of 1951, was the first time he said anything with reference to being married, or to being the father of three children to Carol Amora. We expect the evidence further to show that for a month and a half, Carol Amora had refused to see, or to go out with him because he was a married man, but about the middle of October, 1951, he called her and wanted to take her out. That he would no longer talk about marriage; that he had a dislike for his wife; that she couldn't satisfy him; that he was going to get a divorce from her and could he see her and take her out.

The evidence will show that at that time, Carol Amora was seventeen years of age.

The evidence will further show that in May of 1952, Carol Amora's father passed away and there was an inheritance left to her of approximately $2300; that in the following month of June of 1952, the defendant began having sex relations with Carol Amora; that in the month of December, 1952, the defendant obtained a large sum of money from Carol Amora's inheritance for the purpose of buying a baby-blue Cadillac and for the purpose of paying debts that he had.

We expect the evidence to show from June of 1952 to approximately September of 1952, he had received from her, Carol Amora, approximately $1300.

We expect further, that the evidence will show in September of 1952, the defendant came to Carol Amora's home and said he had left his wife and his children, that he couldn't live with them, that he was going to find a place to stay separate and apart from his family and that he stayed with Carol Amora in her home.

The evidence will further show that for one week he stayed there and at the end of the week he said
42 to Carol Amora that his wife had asked him to come home and try to be a good father to the children and a good husband, and that if at the end of that week he saw that he couldn't continue to be a father to these children and be a good husband to Anna, that she would give him a divorce.

The evidence will show further that he did leave for one week and at the end of that week, he returned to Carol Amora's home and said that he couldn't live with his wife, she couldn't satisfy him and he didn't

want to be with his wife and children, but that she wouldn't give him a divorce, that all she would give him was separate maintenance.

We expect the evidence to show that there was a separate maintenance action filed by Anna Ciucci to compel the defendant to support his wife and three children.

We expect the evidence to show that from September of 1952, the defendant continued to live with Carol Amora in her home until February of 1953, and that in February of 1953, that home was broken up and that the defendant took Carol Amora to a
43 hotel here in the City of Chicago, where he continued to live with her until March of 1953.

We expect the evidence to show further that in March of 1953, the defendant said to Carol Amora and showed her a paper, a court paper, and at that time said to her that he was six hundred dollars behind on the support of his wife and the children and that he had to pay that six hundred dollars or else he was going to be put in jail.

We expect the evidence to show that he said to Carol Amora, who at that time was five months pregnant as a result of the act of intercourse with this defendant, that she would have to leave, that he was in trouble over the failure to pay this money to his wife and the children and that when he came back from work that evening, that she should be gone.

We expect the evidence to show that she did leave and went to live with her sister at 1264 West Lexington Street in the City of Chicago.

We expect the evidence further to show that she continued, Carol Amora continued to live with her sister and that in August of 1953 a baby girl was born to her.

We expect the evidence to show that in July, about a month before the birth of Carol Amora's daughter, that Michael Turco, a brother of Mrs. Anna Ciucci, gave to his sister, Anna Ciucci, a store, a grocery store at 3101 West Harrison Street here in the City of Chicago.

We expect the evidence to show that he stocked that store for the Ciucci's to run and support the wife and the defendant and the three children.

We expect the evidence to show that Michael Turco and his wife, Constance, were there daily to help in teaching them to run the business and to help them keep the books and ordering, and so forth, in the operation of this grocery store.

The evidence will further show, ladies and gentlemen, that about two weeks after the birth of Carol Amora's daughter, the defendant began making daily visits to the home of Carol Amora and her sister, and that from August of 1953, he continued to see her and to see the child.

We expect the evidence to show that the defendant told Carol Amora that he would compel his wife to give him a divorce, that he would make life so miserable for Anna Ciucci, his wife, that she would have to give him a divorce.

We expect the evidence further to show that in October of 1953 the defendant told Carol Amora that

he had moved away from his wife and his children and that he was living in a hotel.

The evidence will further show that he said he was getting a divorce and that when his divorce was completed, would she marry him and Carol Amora told him she would.

The evidence will further show that they began having sex relations again, Carol Amora and this defendant and the evidence will show that in November of 1953, Carol Amora was late in her menstrual period and that she went to a doctor to be examined and the doctor told her that she wasn't pregnant.

The evidence will show that she did not disclose this fact to the defendant, Vincent Ciucci.

The evidence will further show that in November of 1953, the defendant, Vincent Ciucci, told Carol Amora that he got the divorce; that he didn't have to support his wife or his children because his wife had the grocery store at 3101 West Harrison Street.

46 The evidence will further show that there was a discussion about their getting married now that he had his divorce and about looking for an apartment and looking for used furniture, and the evidence will further show that around the first day of December, 1953, Carol Amora showed him, on one of his daily visits to her home, an ad for an apartment and used furniture, in one of the newspapers, and that when she showed it to him, he said to her, "Don't push me." He said, "I'm doing the thinking, Im doing a lot of thinking. The last time I left, I left with nothing; this time I'm going to leave with something."

The evidence will further show that Carol Amora asked him to show her the divorce decree and that he said to her on the first day of December, 1953, "Right after I get through bowling tonight, I'll bring the divorce papers to show it to you."

The evidence will show that there was no divorce paper brought to show to Carol Amora by this defendant.

The evidence will further show that on December 2, 1953, Carol Amora went to the hospital. She was in
47 the hospital until the afternoon of December 4, 1953, at which time she was brought back to her sister's home at 1264 West Lexington Street to convalesce.

The evidence will further show that on the evening of December 4, the defendant, Vincent Ciucci, went to the home of his friend, Frank Caruso, and that he asked Frank Caruso for his .22 caliber hunting rifle.

The evidence will show that the rifle was given to this defendant by Frank Caruso and that when he gave him this gun, which could be disassembled with the stock and the mechanism being separated, the defendant asked his friend, Frank Caruso, if he had any bullets for the gun and that Frank Caruso found in a little pin or button box five or six .22 caliber bullets.

The evidence will show that all but one of these five or six were the long lead bullets, and one was a .22 short, and that there was a conversation between Frank Caruso and this defendant with reference to how this gun operated with the long bullets and how you could make it operate as an automatic weapon and if you put in the short, it would only

be a single shot, and that there was taken by the
48 defendant just the long bullets, which would make the gun operate as an automatic, and that when Frank Caruso told the defendant, "That's all the bullets I have," the defendant said to him, "That's enough, that's enough."

The evidence will show that from the home of Frank Caruso, this defendant took this .22 caliber rifle and these long bullets, the long lead bullets and returned to 3101 West Harrison Street, where this store and the living quarters of the Ciucci home was located.

And there will be put into evidence a plat or diagram showing you the details of the layout of the store and the entrances and exits and the way the living quarters were there set out in this premises.

The evidence will show that at about 10:30 P.M., the three Ciucci children, Vincent Frank, who is the nine year old, Virginia was the seven year old and Angeline, who was the four year old, were all put to bed and sleeping in the rear bedroom of this same premises and he, the defendant, Vincent Ciucci, and his wife were in the kitchen part of this building at 3101 West Harrison Street.

49 We expect the evidence to show that at about midnight Anna Ciucci retired and that the place where she went to bed is in what you would designate as the front bedroom and will be shown on this plat, and that the defendant stayed up to approximately 12:30 A.M., now the morning of December 5, 1953.

We expect the evidence to show that the place was fully secured, the windows and doors were secured.

There was no one in that building, either in the store portion or in the living quarters in the rear of it, except the defendant, his wife and the three children.

We expect the evidence further to show that shortly after 2:00 A.M. of that same morning, of December 5, one Anthony Riccobene, who lives across Harrison Street, on the north side of Harrison Street but across Albany Avenue, was awakened by the tinkle of glass, as though two automobiles had met; that he got up out of bed and he looked through the front window and looked across the street to the corner and there saw, coming from a half-moon window of this store at 3101 West Harrison Street, smoke and flame; that he put on some clothes and within a minute, or a minute or two minutes, he ran from his home over to the corner and as he came to the corner of 3101 West Harrison; that is the southwest corner of Albany and Harrison Street, he saw that there was a fire in the rear portion of this store. He saw, too, that at the inner door of the store, the entrance being right on the corner and diagonally entering into the store, he saw a figure crouching inside of the solid door, the wood and plate glass door, he saw a figure crouching with the face and head facing the door and the back towards the store proper, and towards the rear of the store.

We expect the evidence to show that Anthony Riccobene then crashed this screen door, the outer door, came into the little vestibule and kicked out the plate glass panel, which was in this heavy wooden door.

We expect the evidence to show he was reaching in to remove this person who was there, still crouching

in that position I have described to you, and that that figure was clad only in a pair of shorts, and that as he was turning him to pull him out through the opening in the doorway, when that glass was kicked out, that a known person there appeared and assisted him
51 in removing that person from the inside of the store.

The evidence will show that the second man who participated in the removal of the person who was there crouching was one Charles Fellows, and the evidence will show that the man that was there removed by those two men was this defendant, Vincent Ciucci.

The evidence will further show, ladies and gentlemen, that the defendant, when he was taken out from the inside of this heavy door, was then walked out to the sidewalk and that he thereafter, shortly thereafter the defendant said, "My wife and kids are in there," and that when he did that, Anthony Riccobene ran around to the side door of this premises, which the plat will show you is a doorway on the Albany Street side and that would lead into the front bedroom, and the evidence will show that that front bedroom is where Anna Ciucci was lying on the bed.

The evidence will show that he and some other men who had gathered there, began kicking at this door and throwing their weight against it, and finally forced that door open, and that they there saw through
52 the door, which could open only about two feet because the door was hitting into the side of a bed, that there was the woman's body lying on a bed, and the evidence will show her body was lying crosswise on the bed with her head to the Albany Street door and

her feet were down, dangling over the side of the bed, and she was being consumed by flame.

The evidence will show that the efforts to save this person who was there lying were futile because of the heat and fire and smoke that was coming from that doorway.

The evidence will show that the fire department arrived and that the fire was placed under control and that when the firemen entered the premises, and entered the living quarters of this premises, they there found the three Ciucci children, their bodies in varioout stages of being badly burned and found the body of Anna Ciucci, Anna Ciucci being in the front bedroom and the other children being in the back bedroom.

We expect the evidence further to show that one of those firemen was Lieutenant Eugene Murphy and he will appear as a witness in this case and he will
53 testify that he noticed the presence of blood on the pillow, as he was removing the body of one of the children, to be removed, to be taken to the County Hospital.

We expect the evidence to show that all four bodies were removed or taken to the County Hospital, were there pronounced dead and then transferred to the County Morgue, for a post-mortem to be there made on the bodies by Dr. J. J. Kearns, who is the Coroner's physician.

W expect the evidence to show that the post-mortem disclosed that each of these four bodies had a bullet wound in the head.

We expect the evidence to show that in the heads of two of the victims were bullets, which were recovered by the Coroner's physician, which will be shown to be .22 caliber bullets, long rifle bullets.

We expect the evidence to show further that in the head of Anna Ciucci was a fragment of a lead bullet and the evidence will show that there was a through and through gun shot wound in the head and through the brain of Vincent Frank Ciucci. That is the person who is named as the deceased in this indictment,
54 charging this defendant with the crime of murder.

We expect the evidence to show that these bullets were taken by the police to the crime detection laboratory.

We expect the evidence to show that the defendant was taken from a store across the street, where he had been taken by Charles Fellows, one of the men who helped take him out of the doorway, and by another person who came by, and removed him to a store across the street, directly across the street from 3101 West Harrison Street.

We expect the evidence to show that he was then in the County Hospital and that he was there subsequently questioned with reference to this matter.

We expect the evidence further to show that there was a police guard placed around the premises at 3101 West Harrison Street and that there were men from the Chicago Police Crime Laboratory who went into the premises to make an examination of the premises after this .22 caliber rifle, which had been borrowed by the defendant from Frank Caruso that same night, was found in a wardrobe in a disassembled condition

55 and the evidence will show that that wardrobe was in the kitchen part of the premises.

The evidence will show that there was an examination made of the debris in the rear portion, living room portion of the premises and that these technicians from the crime laboratory found three discharged shell casings, the shell casings being the part of the bullet that doesn't actually go out of the barrel of the gun, but it is ejected by the gun after the bullet is fired. I am sure that some of you folks are very familiar with how that works.

The evidence will show that those three discharged shell casings were taken down to the crime laboratory of the Chicago Police Department, and that there Kasimer Simons fired test shots from this rifle that had been borrowed by the defendant on the night of December 4th, and that he compared those test shots, the discharged casings from the test firings with those three shell casings that the police recovered in that debris and he would tell you they were fired from that same .22 caliber rifle that had been borrowed by Vincent Ciucci the night before, on December 4, 1953.

The Coroner's physician, ladies and gentlemen, will
56 testify that Vincent Frank Ciucci, the victim named in this indictment, was killed as a result of this gun shot wound injuring his brain and that his death would have been caused by that gun shot wound alone, but that his death was hastened or accelerated by the asphyxiation, the smoke, the carbon monoxide, of being there in that fire, and he will testify further that in his opinion, Vincent Frank Ciucci was shot before the asphyxiation, which accelerated his death.

And it is on this evidence, ladies and gentlemen, that the State intends to prove and assume that burden of proof that you have heard about, and on this, that we have qualified you ladies and gentlemen for the death penalty.

Thank you.

The Court: You may proceed.

Mr. Doherty: May it please the Court, gentlemen of the prosecution and members of the jury, at this time it becomes the privilege of the defense lawyers to address you in what is known as an opening statement, and as Mr. Papanek told you, these opening statements are not evidence. They are not to be received by you as evidence.

You see, the theory behind this opening statement
57 is to tell you what we expect the evidence will show. That way it makes it more interesting for you folks to listen to the case as it unfolds before you for the next few days. In that way, you are able to, more or less, sift the wheat from the chaff, as to where the real truth lies.

In this case there is going to be an awful lot of sifting to do.

Now, first of all, I would like to tell you what the defense expects the evidence will show in regard to motive. The very first thing that he talked about, Miss Carol Amora; the evidence will show that Miss Carol Amora went out with this man for at least six months before she knew that he was married, with three children and the first time, after she learned that he was a married man with three children, she had sexual intercourse with him.

The evidence will show that he carried on these sex relations openly and to the knowledge of everyone, including this boy's wife, Anna Ciucci. She made no secret about it.

The evidence will show that she did not impose the condition that he be rid of his family in order to go to bed with her. She never required this boy
58 to kill his family in order to go to bed with her. She knew he was married before she went to bed with him.

Now, I believe the evidence will show that Michael Turco gave the store to Vincent and Anna Ciucci to run. I believe the evidence will show that he ran it himself until about June of 1952 and in June of 1952, I believe the evidence will show he turned it over to a man by the name of Provosino. Provosino ran it for over a year and the locks were not changed. Then Provosino gave it back to Michael Turco and he ran it for over a month, in 1953, June or August, and the locks were not changed. Then it was turned over to Vincent and Anna Ciucci and the locks were not changed.

Four times, the evidence will show, that store changed hands and no showing that the locks had ever been changed, and as the whole parade of witnesses come before you, the defense believes the evidence will show that not one of them will say, will testify that the set of keys to the store is the only set of keys in existence.

Now, on the evening of December 4, 1953, Vincent Ciucci went over to the home of one Frank Caruso.
59 He knocked on the door and Frank's wife answered.

"Where is Frank?" "Down the basement." He went down the basement and he asked him if he could borrow his .22 caliber rifle, which you people will see before you in evidence. And they went upstairs to the apartment to borrow the rifle. The rifle was borrowed in front of not only Frank Caruso but his wife and his son.

The defense expects the evidence to show that this man, Vincent Ciucci, on December 4, 1953, borrowed a rifle, made no secret about it, borrowed it in front of three people. He took the rifle home and put it in the kitchen. He was looking around the store, the living quarters in the back of the store, two bedrooms, the front bedroom and back bedroom, and then the front store part, and his wife asked him to put the rifle out of reach of the children so he put it into the wardrobe located in the kitchen. And he was working around the store, cleaning the shelves, and his son was helping him, Frank, Vincent Frank Ciucci, that forms the basis of this indictment. And the children went to bed about 10:30. About 12:30 a phone call was made to the premises inquiring for Anna Ciucci. Vincent answered the phone and informed the party that she was in bed. The party said it was all right, they would call tomorrow. It was about 12:30.

Then Vincent told his wife he was going to go out and buy some comic books that he promised he would buy for his son, for helping him around the store, and she said, "Don't forget to set the alarm clock for the morning," and he went down to the El station—where is that El station located?

Vincent Ciucci: Kedzie, in between Van Buren.

Mr. Doherty: Kedzie and Van Buren and bought comic books for his boy, and on the way home he stopped into a tavern, right on the way home, and bought two or three beers and then came home and when he came in, it was quiet in the living quarters, so he quietly undressed, and he sat down next to the heater in the kitchen and started to read the comic books he bought for the kid and he fell asleep, and somewhere along about 2:00 o'clock in the morning, shortly thereafter, he felt something hot was hitting him across his shoulder blades, and he awakened to find that the place was filled with smoke and the entire premises were on fire. He was in the
61 kitchen, which is about here and this is the bedroom, and he screamed for Anna and the kids. He went to run into the bedroom and the heat drove him back and he tried to crawl and the heat and flames drove him back, and he ran out into the store and about in the middle of the store there is an island where they have the register and the telephone and he was going for the telephone, and he couldn't breathe and his lungs were burning him and he was choking. He tried his best to make that front door and as he neared the front door, that is the last thing he remembers, until he awakened in the County Hospital.

He awakened in the County Hospital in Ward 24, room 215 on the evening of December 5th. The place was filled with policemen and people were questioning him and he was bandaged, he was burned and he was lying there in that hospital bed, the evidence

will show, with actual brain tissue obstruction, due to the inhalation of smoke, which contains carbon monoxide.

The evidence will show that while he was lying there in that physical state, people were coming in and questioning him.

62 The room was filled with policemen. Three people questioning there — Coroner McCarron, John Gutknecht and Irwin Bloch. There was no judge there to protect him. Those people—

Mr. Papanek: Objection.

The Court: Objection sustained.

Mr. Doherty: And they questioned him and they had a shorthand reporter there and they were asking leading questions which would be objectionable in a court of law.

Mr. Papanek: Objection.

(Whereupon the following proceedings were had in chambers.)

Mr. Papanek: I object to counsel going into anything in his opening statement other than what an opening statement should be, and that is a statement of what he expects the evidence to show, not conclusions of law or other matters.

The Court: The purpose of an opening statement is to give the jury a birdseye view of whatever evidence is to be presented to them during the course of the trial, so that it will enable them to understand each bit of evidence and testimony in its relation to the whole case. At the time it is presented to them in piece-meal fashion. The Court feels, Mr. Doherty, that the last few remarks made by you did not fit into that picture.

Objection sustained.

(Whereupon the following proceedings were had in the presence and hearing of the jurors, to wit:)

The Court: You may proceed, gentlemen.

63 Mr. Doherty: The statement that was taken from Vincent Ciucci in Ward 24 of the County Hospital, is a lengthy statement, which will be introduced in
64 evidence here by the State.

Now, we believe the evidence will show that the people who were interrogating Vincent Ciucci during the course of taking that statement, were seeking to establish two insignificant facts. One, that the doors to the premises were locked.

If you listen carefully when that statement is being read, I am sure you will agree that the evidence is going to show that they asked him the same question about the doors being locked in a hundred different ways, and most of them leading.

Now, the second insignificant point they tried to hammer home there was, "Didn't you tell Frank Caruso when he gave you those bullets, 'that's enough, that's enough'?"

The statement will be loaded with repetition of those two things, and that's all. Nowhere in the statement did Vincent Ciucci admit that he killed his son, that he killed his wife, that he killed his children. Nowhere in the statement did he confess that he killed his son, that he killed his wife, that he killed his children. The statement will show you, ladies and gentlemen, that they didn't even ask him those questions. They didn't even ask him those ques-
65 tions in the statement.

They asked him about the gun. He told them where to find it and that's where they found it. They took the gun down to the crime laboratory and examined it, showed it to be an automatic weapon, .22 caliber, six lands and six grooves, right hand twist; good mechanical condition.

They fired two test shots through it. The evidence will show that they made no microscopic analysis of the scrapings from the inside of the barrel, no microscopic analysis made of anything inside the barrel.

The evidence will show that these pellets they found in the brain of these people who are dead, cannot be identified as having come from that rifle.

The evidence will show that the three cartridges, the three cartridge cases that Mr. Papanek talked about, two were found in the kitchen, amongst the debris and rubble. One of them was found underneath the dresser in the bedroom, front bedroom.

The evidence will show that these learned men from the crime laboratory cannot tell you whether those cartridge cases are longs or long riflle; they won't be able to tell you.

66 The evidence will show that they won't be able to tell you when they were fired.

The evidence will show that the door to the bedroom on the Albany Street side to the premises was burned badly on the outside, hadn't been hit by much fire on the inside.

The evidence will further show that the door jamb around the Albany Street door was badly charred.

The evidence will show that there is a gas heater on the north partition in the store and that the pipe was broken from it.

The evidence will show that these people met their death as a result of carbon monoxide intoxication; that was the primary cause of their death.

Now that, ladies and gentlemen, is what the defense expects the evidence will show, and based on that and the instructions of his Honor, in good conscience we are going to ask you to return a verdict of not guilty.

Thank you for your kind attention.

The Court: We will take a recess now. Take the jury out of the box.

Mr. Doherty: The statement that was taken from Vincent Ciucci in Ward 24 of the County Hospital is a lengthy statement, which will be introduced.

67 (Whereupon the following proceedings were had outside the presence and hearing of the jury, to wit:)

68 Mr. Papanek: It was stipulated, Judge, that this plat, showing the premises of the southwest corner of Harrison and Albany streets, which consists of the store and living quarters of the Ciucci home, as of the morning of the fifth day of December, 1953, that this plat is a true and correct diagram of it.

Mr. Doherty: We have no knowledge of that. We can't stipulate to that. We have no objection to it. We can't stipulate to it because we don't know.

Mr. Papanek: We would offer that in evidence as People's Exhibit No. 1.

Mr. Doherty: No objections.

The Court: It may be received. Let the records show that People's Exhibit No. 1 is received in evidence without objections on behalf of the Defense. Let the records show Counsels have agreed among themselves as to where People's Exhibit No. 1 will be displayed during the course of the entire trial.

(Whereupon People's Exhibit No. 1 marked for identification was received in evidence and is by reference made a part of the record)

69 (The following proceedings were had within the presence and hearing of jury, to wit:)

Mr. Papanek: Ladies and Gentlemen of the Jury: The plat which you see displayed on that board before you, is now in evidence as People's Exhibit No. 1 and is the premises known as 3101 West Harrison Street, which is the southwest corner of Albany and Harrison Streets, as being a diagram of the exterior and interior of that premises, showing the various items as indicated therein, that will be explained by witnesses later on.

70 (Whereupon, the State, in order to maintain the issues in their behalf, presented the following evidence.)

CAROL AMORA, witness on behalf of People was sworn, and testified as follows:

Direct Examination by Mr. Papanek.

71 My name is Miss Carol Amora. I live in Chicago, Illinois. I am 21 years old. I know the defendant, Vincent Ciucci, Sr. I have known him three and one-half years. I met him in March of 1951 in a tavern at 2329 South Kedzie. On that particular occasion, I went with him to a restaurant and then home. Following that, I believe I saw the Defendant two days

or a week later. I saw him at my home. I had occasion to go somewhere with him then. When I first met him, I was brought home in his car.

Q. What kind of car was it.

Mr. Doherty: Objection—immaterial.

The Court: She may answer.

Witness: 1949 Buick.

(Witness continuing)

Following that, I saw Vincent Ciucci from time to time. In the next six months, I saw him two or three times a week. I saw him when he felt like coming around, day or night.

Q. And did you discuss with him his martial status —whether he was married or single?

Mr. Doherty: Objected to as being leading and suggestive.

The Court: She may answer.

Witness: No.

(Witness continuing)

I saw Vincent Ciucci during the month of September, 1951 at my home. I had a conversation with him that month with reference to whether he was married or single. He said that he had something to tell me. He should have told me a long time ago, that he was married and had three children and that he loved me, that if he got a divorce, would I marry him. And I said that I wouldn't go out with a married man.

Following that conversation I saw him about a month and a half later. The occasion for our talking together was just to be friends, just to go out and be friends; he wouldn't talk about marriage or divorce. He called me. Following that conversation, I saw him three or four times a week at night. I saw

him in the beginning of 1952. I was still keeping company and seeing Vincent Ciucci in May of 1952. In
75 May of 1952, my father died. I was living at 1514 West Harrison with my two sisters and my brother-in-law and my father. When my father passed away, I inherited some money.

Q. How much?

Mr. Doherty: Objected to—immaterial.

The Court: She may answer.

Witness: Twenty-three hundred dollars and fifty-three cents. ($2300.53). I put the money in the People's National Bank in a Savings Account. I continued seeing Vincent Ciucci after my father passed away. In the month of June, 1952, something occurred be-
76 tween the Defendant and myself. I went to the hospital and I advanced Vinc three hundred dollars. ($300) He wanted to borrow $300 to buy a car. I had not discussed my inheritance with him. When he said he wanted to borrow $300, I said Yes, for him to go to the bank and get a withdrawal slip. I would call up while he was going on his way and bring it back and I would fill out the form and he could go and get the money. I was in Bethany Hos-
77 pital. Up to the time I went to Bethany Hospital, I had not had intercourse with the Defendant Vincent Ciucci. He came back from the Bank, brought my bank book and the money. He went to get a withdrawal slip and came back and I filled it out, I signed it. It was around the 28th of June, 1952. I don't now remember.

Q. Now I will show you a withdrawal slip which I will ask to be marked People's Exhibit No. 2 for identification, and also a Savings Deposit Book, from

the People's National Bank which I will ask to be marked People's Exhibit No. 3, for identification.

78 (Witness is shown these Exhibits. Witness continuing.)

Yes—this is the one, I recognize People's Exhibit No. 2 for identification, the withdrawal slip. I first saw that slip in the Hospital. That is my signature in the lower right hand corner. I put my signature there after he filled it out. The balance of the writing of that withdrawal slip is in Vinc's handwriting. I saw People's Exhibit No. 3, for identification, in the Hos-

79 pital. That is the bank book that I told this Court and Jury about with reference to my savings account. After I gave Vincent Ciucci this withdrawal slip, this book, I saw him the next day. I had a conversation with him, with reference to these two exhibits. I asked him if he had bought a car and he said "No"—he didn't want to buy it any more so I told him to give me back my money. He said he got into a dice game, figuring he could get some money for himself and pay me back.

Q. Did he tell you what kind of a car he was going to buy?

Mr. Doherty: Objection—immaterial.

The Court: She may answer.

Witness: Yes sir.

(Witness continuing)

It was a baby Cadillac.

80 Following that, I had a conversation with him about my bank account. When I got out of the Hospital about the 30th or 28th of June, I can't quite remember which, it was the same year.

Q. Now I will show you a withdrawal slip on the People's National Bank, dated June 30, 1952, and I will ask it be marked People's Exhibit No. 4 for identification.

(Document marked People's Exhibit No. 4 for identification)

I ask you if you have ever seen this withdrawal slip.

(Witness continuing)

81 I saw it at my house, on the 30th. My signature appears on the lower right-hand corner. And the balance of the withdrawal slip is in the handwriting of Vinc. On People's Exhibit No. 2, for identification, and on People's Exhibit No. 3, on the back of each Vincent Ciucci's signature appears. Those two withdrawal slips were taken from my account from the book, People's Exhibit No. 3, for identification. On June 30th, he wanted to borrow more money; I forget what it was. To pay a bill off, or something.

82 I don't know what it was. After that I talked with him about this bank account.

Q. Did he receive any other money from this account?

Mr. Doherty: Objection.

The Court: She may answer.

Witness: Yes—thirteen hundred dollars ($1300) in all. That includes these two withdrawal slips that I have described.

(People's Exhibit No. 2, No. 3, and No. 4, for identification offered in evidence.)

83 Mr. Doherty: Objection—on grounds that its immaterial.

(Whereupon a discussion was had between Court and Counsel outside presence and hearing of Jury)

84-86 (People's Exhibits No. 2, No. 3, and No. 4, for identification were received in evidence as People's Exhibits No. 2, No. 3, and No. 4, and were exhibited to the Jury)

(Whereupon the following proceedings were had within presence and hearing of Jury, to wit:)

(Witness continuing)

After I left the hospital, I had occasion to see the Defendant four or three times a week, only depended on him. I had sex relation with him after I came out of the hospital and I continued to have sex relations with him after that. I am referring to the Vincent Ciucci, Sr. seated in the courtroom—the man third from my right in the tan suit.

88 Mr. Papanek: Indicating the Defendant, Vincent Ciucci, Sr.

(Witness continuing)

I saw the Defendant during the month of August and into September of 1952. In September of 1952, Vinc came to live with me at 1514 West Harrison. He came in that night with his clothes and he said that if he could stay for a week—a couple of days—until he found a place to go, that he was going to try to get his divorce, and I said he could stay. During the next two days I had a conversation with him with reference

89 to his wife. I believe it was a day or two days after. He said he was going to call up Anna and ask her to give him a divorce. He called her up and she said to him, "If you come home and try to be a good husband and a good father for a week, and then if you can't, if I see you really can't do it, then I will give you a divorce." He left then for one week. After

that week, he came back, he said that he just couldn't do it and that he tried, but he couldn't—that he loved me and Anna wouldn't give him a divorce, she would only give separate maintenance. I continued to live with him following that. We were having sex relations during the time he lived there with me. I be-
90 came pregnant. In October of 1952-1953.

Q. Was it that same year, 1952, that he was living with you?

Mr. Doherty: Objection—the witness has answered.

The Court: She may answer.

Witness: 1952.

(Witness continuing)

I continued to live there with Vinc about six, seven, eight months. During the month of February, 1953, Vinc moved out to live at the Hotel Crest. The next two days he came over and asked me to go with him.
91 I went, and lived at the Crest Hotel with him. I lived with him until about March. March, 1953, I had a conversation with him. He came home from work one night and showed me a Court Summons, a Subpoena, that he said he owed Anna $600 back Alimony. If he didn't give it to her, the Judge said he was going to have to go to jail. He said to me, I can't afford you and the baby coming and my three kids and my wife, so you will have to go by morning. I left and went to live with my sister at 1264 West Lexington. I was five months pregnant when I left the Crest Hotel. Following that and up to the time of the birth of my child, I had occasion to see the Defendant about five times at my home. The child was born August 4, 1953. Her name is Rose Francine Ciucci. After the child was born, I saw Vincent Ciucci

about two weeks later, in my home. He came in the house, he said he was sorry he wasn't there when the baby was born, like he promised. He tried to help me, but all the money was $5 or $10 a week. He wasn't positive that he could do it every week. I
93 saw Vincent Ciucci after that. I saw him every day in my home—day and night time.

Q. And what conversations did you have, if any, during the months of August and September of 1953?

A. He said he was going to get—

Mr. Doherty: Objected to, no proper foundation.

The Court: Objection sustained.

Q. Did you ever have any conversation with him during those months with reference to whether he was going to get a divorce?

Mr. Doherty: Objected to as being leading and suggestive.

The Court: She may answer.

Witness: Yes sir.

Mr. Papanek: And what was said either by yourself or Vincent Ciucci with reference to that?

94 Mr. Doherty: Same objection—no foundation.

The Court: Lay a foundation a little more.

Mr. Papanek: Will you tell the Ladies and Gentlemen of this Jury who was present when any of these conversations, with reference to a divorce, was had during August and September and when those conversations were, please?

A. My sister—

Mr. Doherty: Object to the form of the inquiry.

The Court: Objection overruled.

Witness: My sister—her kids upstairs.

Mr. Doherty: When was the first time of the conversation?

(Whereupon the following proceedings were had in chambers outside the presence and hearing of Jury, to-wit:)

Mr. Doherty: I'm objecting on the grounds that he hasn't laid the proper foundation.

Mr. Papanek: This witness has testified she saw him every day from the time her youngster was two weeks old. I asked her then, during the month of
95 August and the month of September, did they have any conversations in reference to a divorce from his wife. I'm trying to save time, and I'm not trying to do anything outside the law. And it is a preliminary question, about specific conversations with reference to certain things in the months of October and November, which I will have to fix the time and place.

The Court: In the form of a foundation leading up to specific conversations that you expect to show took place in October?

Mr. Papanek: And November of 1953.

The Court: For that purpose the Court will permit the question to be answered without tying it down to any particular conversation and for the purpose of laying a foundation for these conversations you expect to identify as having taken place in October.

Objection overruled.

96 (Whereupon the following proceedings were had within the presence and hearing of the Jury, to wit:)

(Witness continuing)

In the month of September, 1953, I had conversations with Vincent Ciucci with reference to his getting a divorce from his wife. It was about the mid-
97 dle of September. No one was present. He just said he was going to move to a hotel and that he was going to get a divorce. In the month of October, 1953,

I had a conversation with him as to whether he moved to a hotel. My sister was present and he said he was living at a hotel. He wouldn't tell me which hotel, even though I asked. He said, "If I tell you, then Anna may call me up; you may call me up and then I won't get a divorce." By Anna he meant Mrs. Ciucci. I continued seeing him after that. I resumed
98 sex relations with Vincent Ciucci after the birth of my daughter, in about October. In the month of November, I was still seeing the Defendant about every day. In the month of November of 1953, there was something unusual with reference to my menstrual period. I was supposed to get my period on the 15th of November and I didn't get it. I had a conversation with Vincent Ciucci with reference to that. I told him I thought I was pregnant again. He said to go to a doctor and see what the doctor
99 said. I went to a doctor. He examined me. I told him that I thought that I was pregnant, but I wasn't. I saw the Defendant shortly before Thanksgiving Day November, 1953, at my home. Before that, in a conversation, he had said he was going to get a divorce. I don't know what date it was, but it was in November. He called me up on the telephone. He said he got his divorce and that as long as Anna had the store, he wouldn't have to give any alimony to the kids, and would I go out and celebrate it with him that night. We went out. I did not see him until two days after Thanksgiving.

Q. Did you talk with him following that statement that he was divorced, about getting a flat?

A. Yes, Sir.

Mr. Doherty: Objection.

The Court: She may answer.

101 The Witness: I talked with him about it on a number of occasions. He said that for me to look for a flat, and he would look for a flat. I had a conversation with him about my relationship with him. Well, we were out when he told m —I said, "As long as you said you got the divorce, what are your plans?" So he said, "well, you wait a while, you wait for three weeks to a month and I don't want to talk to any fellows or bother with anyone, I'll keep it sort of on a trial basis for about three weeks to a month." He said, "I will let you know when I am ready." I saw the defendant on December 1, 1953, at my home. I had a conversation with him. The children were upstairs. Well, I had looked in
102 the paper and I saw an advertisement for used furniture and when Vince came in I told him that I know we couldn't afford new furniture and this would be the thing and he was sitting in a chair. He sat back and he said, "Don't—". He pointed his finger at me and said, "Don't push me, I am doing the thinking, see. When I left the first time, I left with nothing, but this time, I am leaving with something." I had a conversation with him on that day with reference to his divorce decree. He was supposed to come in at twelve o'clock, after bowling to show me his divorce papers, that's twelve o'clock at night. I did not see Vincent Ciucci December 1, 1953. On the early morning of December 2,
103 I went to the Hospital, St. Anthony's Hospital I was there for three and a half days, I believe, and I returned home early on the 4th, December 4th. I was told to go home and stay in bed from that Friday until Monday, until I came to the doctor. I wasn't

to move out of bed. I did that. I did not see Vincent Ciucci between that December 1st visit and any
104 time up to and including December 5th, 1953.

Q. Did the defendant ever say to you that he couldn't live with his wife, that she couldn't satisfy him, or words to that effect?

Mr. Doherty: Object to the form of the inquiry as being leading and suggestive.

The Court: The objection is sustained.

(Jury to disregard)

Q. Miss Amora, other than the conversation that you have related here to this Court and jury with reference to what the defendant told you was the situation, or his relationship with his wife, do you recall any other conversations that you had with reference to her, to Anna Ciucci?

A. Yes, sir.

Q. And what were those conversations, please, and when were they?

Mr. Doherty: Objected to.

The Witness: I can't remember when, just about when they were, but he always told me that he loved
105 me and that he couldn't live with Anna. He told me why. He said because he loved me and he couldn't get any satisfaction at home.

Cross Examination by Mr. Doherty.

I testified I first met Vincent Ciucci in March of 1951. I first learned that he was a married man six months after I went out with him. The first time that I had a sexual intercourse with him was July
106 of 1952. That was after I had learned that he was a married man with three children. He came and

lived with me at 1514 West Harrison. My two sisters, her husband and her boy also lived there.

Q. Did they know that you were sleeping with Vincent?

Mr. Papanek: Object to that as being immaterial.

The Court: She may answer.

The Witness: Yes.

(Witness continuing)

In March of 1953, Vincent went back to his wife and
107 my first child was born in August of 1953. Vince told me that Anna and Vincent Ciucci wanted to adopt my child.

Q. In other words, Anna and Vincent Ciucci wanted to take that child into their home and raise it as their own?

Mr. Papanek: Object, that is not what the witness said. I object to the form of that inquiry.

The Court: She may answer, if she knows.

The Witness: He only came to the house and said, told me he wanted the baby.

(Witness continuing)

And that since I was a young girl, that Anna and him would take care of her. I did not let him do that.

Q. Did you know Vincent's son, Vincent Frank Ciucci?

A. I talked to him over the telephone once or twice. I don't quite remember. (Witness continuing) Vincent told me he spent quite a bit of time with his son, but I don't know. He took his son bowling
108 once that I know of.

Q. Vincent Ciucci loved his son, didn't he?

A. I only know what he told me.

Q. What did he tell you?

A. That he loved his son.

(Witness continuing)

I think that the first time I saw Vincent Ciucci after 2:10 A.M. on December 5th, 1953, was on the early 7th, I think. I don't remember. I believe it was Sunday. It was on a Sunday night, I think, about one o'clock in the morning. I think it was Sunday or Monday. I think the fire occurred on the 5th, I believe.

Q. What time?

A. I don't know what time.

Q. Well, that would be about two o'clock in the morning, is that right?

Mr. Papanek: I object. The witness said she wouldn't know.

The Court: She may answer, if she knows.

(Witness continuing)

I did not go to the hospital to see him that same day. I did not go the following day. I saw him at Bridewell, on the corner here. I don't know where it is. He was in a bed. I noticed a bandage on him. He appeared to be in pain. He appeared to have difficulty breathing. At that time, I had a conversation with him, just him and I. At that time, I did not ask him if he did it. I asked him why he did this to the baby and me, why did he implicate us.

Q. What did he say?

A. He said, "I don't know what they are talking about and I didn't do anything."

Q. Miss Amora, getting back to the month of November, 1953, you were late in your menstrual period, is that correct?

A. That's correct.

(Witness continuing)

I consulted a doctor, not an obstetrician, just an M.D. He told me I was not pregnant and then after I had consulted the doctor and found out that I was not pregnant, I told Vincent that I was.

Q. Then you lied at that time, is that right?

111 Mr. Papanek: Object.

The Court: She may answer.

The Witness: Yes, sir, I lied.

(Witness continuing)

I did not have a boy friend other than Vincent Ciucci on December 4, 1953.

Q. Did some man want to marry you on December 4th, 1953?

A. No.

(Mr. Doherty asks for a recess and that the witness be instructed not to talk to anyone during the recess.)

(Thereupon, the following proceedings were had outside presence and hearing of jury, to wit:)

The Court: The witness is instructed that during the period of the recess, she is instructed not to talk to anyone at that time.

112 The Witness: Yes, sir.

(Whereupon said cause was recessed to two o'clock P.M. of the same day, Thursday, January 6, 1955.)

113 Thurday January 6, 1955
Afternoon Session
2:00 P.M.

Parties Present: The same

(Whereupon the following proceedings were had
114 within the presence and hearing of the jury, to wit:)

CAROL AMORA resumed the witness stand having been previously sworn, testified further as follows:

Cross Examination by Mr. Doherty (Continued).

This conversation between me and Vincent in reference to my pregnancy took place in the month of November, the 15th of November. At that time, the defendant was not living with me. He did not come to live with me subsequent thereto.

Q. Now, at that time, did you also tell him that you knew a man who was interested in you?

A. I don't believe it was that time.

115 (Witness continuing)

I think it was some time after—before the baby was born.

Q. Well, did you on November 15, 1953, tell him you knew a man was interested in you and wanted to marry you?

A. If I did, I don't remember.

Q. Well, maybe I can refresh your recollection. On the afternoon of March 16, 1954, you were called into the courtroom of his Honor, Judge John T. Dempsey, isn't that a fact?

A. Yes, sir.

(Witness continuing)

I swore to tell the truth and I did.

Mr. Doherty: Page 1160, Mr. Papanek, bottom of the page.

Q. Were these questions asked of you and did you make these answers; question by Mr. Tudor: "You told him also that you know a man is interested in you?" Answer: "Yes, sir." Question: "Who is that man?" Answer: "I don't care to give his name." Question: "Why?" Answer: "Well, because I don't
116 care to have him involved in this." Question: "Why, how could he be involved in this?"

Mr. Papanek said, "Your Honor, I submit that the witness has answered" and the court said, "She may answer the previous question, why?"

The Witness: "Because he's got a mother and a father, and he was trying to marry me and give me a home for my baby, and I don't think I should tell his name. I think that's a good enough reason."

Were those questions asked and answered?

Mr. Papanek: That is objected to.

The Court: She may answer.

The Witness: A. Yes.

Mr. Doherty: Now, does that refresh your recollection?

Mr. Papanek: Object, your Honor. I am objecting to the form of that inquiry and it is not in any way impeaching on anything he asked her.

(Whereupon following proceedings were had in
117 chambers, outside presence and hearing of jury, to wit:)

118 (Discussion between court and counsel in chambers.)

119 (Whereupon discussion was had between court and counsel off the record, after which the following proceedings were had within the presence and hearing of the jury, to wit:)

Mr. Doherty: Q. Now, Miss Amora, isn't it a fact that after your child was born, that you had a man who was interested in marrying you and providing a home for you and the child?

A. Yes, sir.

Q. Do you want to tell us his name?

A. No.

Q. You never told Vincent Ciucci to kill his family, did you?

A. No, sir.

120 Q. You didn't require that, did you, as a condition of going to bed with you?

Mr. Papanek: Your Honor, objection.

Mr. Doherty: Q. What is your answer?

The Court: She may answer.

The Witness: Repeat the question, please.

(Question read)

The Witness: I don't follow the question.

Q. Did you tell him at any time that he couldn't go to bed with you unless he got rid of his family?

A. No, I never told him that.

Q. Now, where were you between 2 A.M. and 2:10 A.M. on December 5th, 1953?

A. I was home in bed.

Q. Where was your other boy friend?

A. I don't know.

121 (Witness excused)

MICHAEL TURCO called as a witness on behalf of the People, sworn, and examined and testified as follows:

Direct Examination by Mr. Papanek.

My name is Michael Turco. I live at 5214 West Crystal, Chicago, Illinois. I live with my wife and three children. I am partner owner in a liquor store located at 2201 South Pulaski. Anna Ciucci was my
122 sister. In the month of August, 1944, my sister, Anna Turco, married Vincent Ciucci, Sr., and following that three children were born to my sister, Vincent was the first born. In December, 1953, my nephew, Vincent Frank Ciucci, was nine years old. The name of the second born child to my sister Anna was Virginia. She was seven years old in December of 1953. And the youngest child was Angeline. In December of 1953,
123 she was four years old. My sister, in December of 1953, was twenty-eight. After my sister's marriage in 1944, she and her husband and three children resided at 2415 South Western Avenue with his parents and they lived there about two years previous to this happening. In the month of July, 1954, I was the owner of a building at 3101 West Harrison Street. There was a grocery store in that building. Prior to 1953, I had operated the grocery store myself, from
124 1941 to 1952. In 1952, I sold the business to someone, to Frank Provocino. Frank Provocino operated the grocery business exactly one year. After that one year, he wasn't pleased with it so I bought it back from him. That was in July, 1953. Then I gave it to my sister Anna and her husband, the defendant, Vincent Ciucci, sitting on the other end of the counsel

table. When I turned that business over to them, there were no living quarters in the premises. Subsequently, there was an arrangement made for room in the back. That was before the Ciucci family moved in there. They moved in on August 5th. My wife stayed with my sister Anna for three months to break her in. I went there every morning to display vegetables, and every evening after I got through work. I bought $500 worth of stock when they took it The last time I was in the building at 3101 West Harrison was on December 3rd. That was at night about 9:30. When I was there, my sister Anna and her three children were there. I had occasion to be in the rear portion of the store, the living quarters. The defendant, on the night of December 3rd, 1953, was in good health. His family also was in good health. That was the last time I saw any of that family. On the 3rd day of December 1953, I can describe the physical premises of that building.

(Witness is asked to step down and steps down. He is asked to take a pointer and step to the side of the diagram which is People's Exhibit No. 1, now in evidence)

(Witness continuing)

This is the west wall (indicating). It is a solid brick wall, going south towards the back of the building. There are openings on the west wall of that building. There is a window (indicating). As I saw that window on December 3rd, 1953, it had metal bars going up and down, installed into the brick of that wall. And south of that there is another opening on the south wall between the wall and the rear door (indicating). I am now pointing to an opening at the southwest corner of the store proper. This is a door

covered with heavy metal on the outside (indicating). That door opened from the store itself into a small area that would be here (indicating). On the outside
129 of that door, that is a small area that was fenced in by heavy lumber going up about six or seven feet. The door, as you come into the building, leads into the kitchen. There was a means of securing that door on December 3rd, 1953. There was a sliding bolt from the frame and into the door, and there was metal brackets or bolts on the frame, so some two by four can go across that door to keep from opening it That door opened inward so that if there was a two by four in that frame, that two by four would keep the door from being opened. There was also a pad-
130 lock on that door. This is the south wall going across here (indicating). It is also a solid brick wall going across there (indicating). There are no openings on the south wall of that premises. There is another store to the south of that wall. That is Mike Russell's store. He has a moving office in there. That is separate and distinct from this grocery store and living quarters. This is the east wall of the premises at 3101 West Harrison (indicating). And this is the entrance of the store (indicating) I will describe the entrance-way. That is at the corner, the southwest corner of
131 Harrison and Albany. That entrance has two doors, the outer door is a combination of screen and storm door. That is right here (indicating). Then there is a vestibule and plate glass on both sides; that is, plate glass on both sides of this vestibule. Going out into it, you go into the inner door. This door is made with a heavy frame with a glass panel. That is, this door (indicating).

Q. All right.

A. Opens in

(Witness continuing)

You come into the store proper. The glass in the frame door starts about three feet from the ground level. The glass panel would be about four by three
132 or five by three. The inner door has a double lock, it had two padlocks, two Yale locks. You can open it from the inside and outside. It has to have a key to open or close that door from either side. There was a means of securing the outer door, the screen door. This had a lock that you could only open from the outside with a key and on the inside you turn the knob.

Q. Now, will you describe the rest of that wall to the south, please?

A. The rest of this is plate glass; this is Albany Avenue (indicating). This is a solid brick wall, and we hit the half-moon windows. This window is approximately six feet from the ground.

Q. You are again pointing to two parallel lines quite close together, is that correct?

A. That's right.

Q. And then what comes south of here?

133 A. South of this is the solid brick wall and then we come into the other door, side door. I call that the Albany Avenue door.

(Witness continuing)

This has a double door, has a screen door, outer door. The inner door is a heavy door with a metal covering in and out. This door was covered in and out. The outer door was a combination screen and storm door. These doors had provisions for securing them. The screen door had a regular screen door hook

lock that you hook. The inner door had also metal brackets with sliding bolts, like this door here (indicating), and padlock. By metal brackets I mean metal brackets that hold the two by four and that door opens inward. The screen door opens outward.

Q. Now, coming south of that door then, what was
134 there on that wall?

A. This continues the building with the solid brick wall and then we come to a window that is about the same height as the half-moon window. (indicating).

Q. You are now pointing to a window in the rear bedroom?

A. Yes, sir.

(Witness continuing)

That would be about six feet from the ground and just south of that there is solid wall.

Q. Now, Mr. Turco, the window which you have just pointed to in the rear bedroom, did that have any means of protecting the window?

A. Yes, sir, this had metal bars coming across it.

(Witness continuing)

These were into the brick. The half-moon window
135 up in the store portion also had heavy metal bars across the window, and a heavy mesh wire covering that. This window did not open.

Over the door on the Albany Street side there was a transom. That, also, had metal bars going across that transom. They were secured in the brick. The door over at the southwest corner of the building, that led from the kitchen into that small area had a transom that was secured in the same way, also had

bars going across it just like these in the windows
136 The interior of that building was divided into a store and an apartment.

Q. And the store part, on the far north, what was that constructed of?

A. Grocery store.

Q. No, the outer wall?

A. This is a plate glass, the front of it (indicating).

Q. From the west wall over to the door?

A. Yes, sir.

(Witness continuing)

The division of the store from the living quarters was made by a partition. It was from the floor to about three feet away from the ceiling, three or four feet away from the ceiling It was open the full length of the building, above the partition. The living quaters from there back were divided by plaster board, just like the partition, plaster boards. This is the kitchen, it separates this room from the kitchen and the rear rooms from the front rooms in this
137 partition. (indicating). These partitions of the rear bedroom were as high as about three or four feet away from the ceiling. The same is true of the side of the partition on the side of the front bedroom. This is the kitchen. (indicating). And that runs from the store all the way to the south end of the building. There was no door, other than the ordinary opening, between the kitchen and the front bedroom. It was just an opening. There was a doorway between the bedroom and the front bedroom, but it was just an
138 opening, no door. There was only one opening to get into the rear bedroom.

Q. Now, as that plat shows the location of the furniture and articles of the store, is that the way that you there saw it on December 3rd, 1953?

A. Exactly.

(Thereupon, the witness resumed the stand)

Q. Now, Mr. Turco, did you, following the 3rd day of December 1953, ever see the body of your wife—or of Vincent Ciucci—of your sister, or Vincent Frank, or Virginia, or Angeline?

139 A. No, sir.

Cross Examination by Mr. O'Donnell.

The Witness: I stated that I bought this building in 1941 the last time, but I wasn't thinking. I purchased that building in 1946. I began operating the grocery store at 3101 West Harrison in December of 1941. I operated that grocery store until 1953, July. I sold the store or turned it over to Mr. Provocino.

Q. Do you know whether Mr. Provocino had the locks changed on the premises?

A. I don't know, but I don't think he did.

(Witness continuing)

140 Mr. Provocino was in business there about a year and then I bought the store back from him in about July. I did not operate the store for any length of time. Not for long, because when I took it back I had in mind to give it to my sister. I did not have the locks changed on any of the doors. I think it was still in July of 1953 when I gave the store to my sister and Vincent Ciucci. In August they moved in. I don't know whether or not they had the locks changed.

Q. Do you know how many sets of keys there

141 were to the premises at 3101 West Harrison Street?

A. Just that one set. I recognized it when I took the store back.

Q. Do you know whether or not that is the only set?

A. Well, it was the set I gave them; that is, the set they gave me back.

Q. You don't know whether any sets were made after that, do you?

A. No, I don't.

Q. You don't know whether Mr. Provocino had a set made, do you?

A. No, sir.

(Witness continuing)

The partition between the kitchen and the two bedrooms was about six or seven feet high. I don't know how high the ceiling was in that portion of the building, ten feet, twelve feet, I suppose. I never measured it.

Q. Then, there was an area of about anywhere from four to six feet from the top of the partition
142 to the ceiling?

A. Maybe three or maybe four feet.

Q. Would it be less than three?

A. I don't know.

Q. Was there any insurance on the life of Vincent Frank Ciucci?

A. There was.

Q. Will you tell us who the beneficiary was, if you know?

A. I did know, but I forget now.

Q. Do you remember when you forgot?

Mr. Papanek: Object.

The Court: He may answer, if he remembers.

The Witness: A. Well, your Honor, one was made out to my sister and one was made out to my other sister. I don't know which is which. That is the reason I said I don't remember which is which now.

Mr. O'Donnell: Q. Do you know if Vincent Ciucci was the beneficiary of those policies?

A. He was on but one, I think.

Q. We are talking about the policy on the life of Vincent Frank Ciucci?

A. I don't know. I don't remember which one.

(The witness continuing)

143 I saw my sister almost daily prior to the 3rd day of December 1953. She did not appear to me that she had been brooding. She did not appear melancholy or said. She wasn't that type. She was always happy to me.

Q. She was happy to you?

A. Yes.

(Witness excused)

ANTHONY RICCOBENE called as a witness on behalf of People, sworn, was examined and testified as follows:

Direct Examination by Mr. Papanek.

My name is Anthony Riccobene. I live at 3044 West Harrison. I live on the first floor with my sister. I am single. I was convicted previously of the crime of armed robbery in 1942. I was convicted on four
144 charges. I lived there at that address with my sister on West Harrison Street in the month of December 1953. I lived there on the early morning of December

5th, 1953. At about 2 A.M. of that morning I was at home, asleep.

Q. And where in the first floor at that address did you sleep?

A. In the front room.

Q. And that faces in what direction?

A. Faces south.

(Witness continuing)

That is immediately on Harrison Street. There are windows in that front room facing Harrison Street.

Q. Now, how many doors to the east of Albany Street is that address of 3044 West Harrison Street?

A. From where?

Q. From Albany, how far east?

146 A. About 100 to 150 feet east. That is on the north side of Harrison Street.

(Witness continuing)

At about 2:00 A.M. on the morning of December 5th something unusual occurred. I was sleeping at the time and I was awakened by the sound of a crash and a tinkle of glass, so I was half awake and then I heard somebody running up and down the street hollering, "Help fire", so I got up from bed and I looked out through the venetian blinds and I looked to the southwest and I could see flames coming from the building on the corner. That was the grocery store at 3101 West Harrison. That was on the southwest corner.

Q. And where from the building did you see the smoke and flames?

147 A. It was at the side of the building, on the Albany Street side. There was a half-moon window on the

side of the building where the flames were coming out of.

Q. Now, when you describe this person running up and down the street, did you have occasion to see this person?

A. No, sir. When I saw this occurrence that I have just related to you, I put on some clothes and I went out in the street. I went across the street where the fire was there, and as I was going across the street, when I got to the corner, I could see someone was in the store. In the grocery store, in the front end of the store, up against the window, the door window.

Q. And when did you first notice a person in that portion of the store?

A. When I got right to the corner.

Q. And did you notice anything with reference to the interior of the store at that time?

148 A. Well, the back end of the store was in flames.

Q. And where, specifically did you see this person in that store?

A. At the front door.

Q. And in what position was that person?

A. He was in a crouched position with his arms up over his face, up against the door.

Q. Would you indicate, Mr. Riccobene, to the ladies and gentlemen of this jury just how you there saw him? Would you rise from your chair and indicate, please?

A. Crouched with his arm over his head and face, up against the glass, glass door. (indicating).

(Witness continuing)

The arm was resting on the door itself and the person's head resting on the arm.

Q. That would be facing in what direction?

A. That would be facing north, just about northeast.

Q. And did you notice at that time how the person was clad?

A. Not at that time, no, not at that time.

Q. What did you then do? What happened after that? What did you do?

A. Right then, I just, I threw myself up against the
149 screen door that was in the front and then kicked and broke the screen door, stepped into the little vestibule that was in there and stepped to the side and kicked out the glass and I reached in there and twisted this man around and started pulling him out. Then another arm come over me to assist.

(Thereupon the witness was requested to step down from the witness stand and step up to the chart now in evidence as People's Exhibit 1. The witness does so.)

Q. Mr. Riccobene, will you indicate, please, for the court and ladies and gentlemen of this jury, where it was that you saw this person crouching in a manner which you have described?

A. This would be the inner door here. (indicating) It would be right in here. (indicating)

Q. You are now indicating in the store and towards the right hand side of the doorway, is that right?

A. That's right.

(Witness continuing)

The window which I kicked out was right in this
150 door. (indicating) The window was half glass and half wood. This is the vestibule right in here. This is the screen door here. (indicating) In other words,

the vestibule is between the outer screen door and this inner door that I have told you about.

(Thereupon the witness resumed the witness stand.)

Mr. Papanek: Now, Mr. Riccobene, when this other person came to assist you, exactly where was this person that you first saw on the inside of that store?

A. Up against the door.

Q. And was he then standing or crouching or what?

A. Still crouching.

Q. Will you explain exactly what transpired between yourself, this person who came into this vestibule with you and the man that was inside the store?

A. Well, as I twisted this person around to pull
151 him out, I got him halfway out and this arm come over me and he grabbed one arm. I had him by the shoulders and pulled him out into the vestibule and then into the street. Then I went back into the vestibule and I started kicking at this door to see if I could kick the door open and the flames and heat got so dense, I had to get out, so I got back out on the street. This person we pulled out was running up and down the sidewalk hollering, "help, fire".

Q. How was this person dressed, this other man you pulled out of the store?

A. He had just a pair of shorts on.

(Witness continuing)

He was a white man. The person who helped me pull him out was a colored man. I know who that man was that assisted me in pulling that person out of the

store. His name is Charles Fellows. I had not known
152 Charles Fellows before. I had never seen him before. I did not know this person that I was pulling out through that window, the opening of the door. I had never seen that person before.

Q. Are you now sure as to who that person was you pulled out?

A. No, sir.

Q. Were you ever sure at any time?

A. No, sir.

(Witness continuing)

I was never in that store as a customer. I had never had any dealings with anybody in that store.

Q. Now, Mr. Riccobene, what happened then, after you came out of the vestibule?

A. He was running up and down the sidewalk, hollering, "help, fire". I went up to him. He was in a hysterical condition. I laid him down and when I laid him down, that is when he told me his wife and
153 children were still in there, so I went in through this plate glass, this window, in the front of the store and went in about 10, 15 feet and there was flames from the back end which drove me back into the street so when I got back in the street, someone said there was a side door on Albany Street, so we went around, four or five, to the side door and there was a screen door, the first door, and we snapped the hook. Four or five other fellows went with me. I do not know who they were.

In the back of the screen door was a metal plated door, wooden door with metal top on it, so two of us would throw ourselves at the door—there was a big

fellow kicking at it—and after a little while we got this door about two feet open, so when we got it open, halfway open, there was something behind the door and then we could see the body laying on the cot. The head was facing east, toward the door. I asked for a
154 coat to see if I could reach in to pull this cot or bed, whatever it was, toward the door, and so I couldn't get a coat. That is when the fire department comes and took over from there. I could not open that door all the way when it was forced open on the Albany Street side because the cot was in back of it; bed or cot in back of it. After the firemen came, I stayed there a little while and I seen them take one body out and then I got sick and I went home.

I appeared before the Grand Jury of Cook County. I there saw witnesses appearing to testify in this case. I did recognize somebody here in the Criminal
155 Court Building on that day. I recognized Charles Fellows. That was the first time I saw him from the time of this occurrence on the morning of December 5th. I did not recognize anybody else other than the police officers. I do not recall the date I appeared here before the Grand Jury. It was the following week. That would be about the 9th, I believe it would be. I couldn't say exactly. I don't know the exact date.

Q. By the way, did anything unusual occur as you and Mr. Fellows were pulling this person through that opening of the door?

A. Yes, sir.

156 Q. What?

A. Well, I could see he had blood or a cut on him as we pulled him out.

Q. Do you know where that came from?

A. Well, there was some jagged pieces of glass on this door.

Q. In the frame of the door?

A. That's right, yes, sir.

Cross Examination by Mr. Doherty.

My name is Anthony Riccobene. I testified that about 2 o'clock in the morning of December 5th, 1953, I heard a sharp noise, followed by a tinkle of glass. That noise could be described as an explosion. I sat up in bed until I heard this person running up and
157 down the street hollering, "help, fire". Then I went to the window and looked out and I could see there was flames coming out of this building on the corner. That was coming from the half-moon window. I seen fire. It was dark. I wouldn't know if there was smoke. I didn't notice any peculiar color to the smoke. After I noticed that, I put on some clothes and I went across the street and as—

Q. How long did that take you, to do that?

A. Not more than thirty seconds.

Q. From the time you heard the man hollering, "help, fire"?

A. Yes, sir.

(Witness continuing)

158 I cannot describe the man I heard hollering, "help, fire". I don't know how tall he was.

Q. Was he white or colored?

A. He sounded like a colored man by his voice.

Q. Yes. He was running on Harrison Street, is that correct?

A. That's right, yes, sir.

Q. Now, where was Vincent Ciucci when you first saw him?

A. If it was Vincent Ciucci. You are asking me if Vincent Ciucci was the man?

Q. He was the person that was trapped in the burning premises, wasn't he?

Mr. Papanek: Object to the form of the inquiry, if the court please.

The Court: The objection is sustained as to form.

Mr. Doherty: You saw a figure in the premises at 3101 West Harrison Street, did you?

A. Yes, sir.

(Witness continuing)

The figure was exactly in the front end of the store at the door, and he was kneeling.

Q. He was bent over in a kneeling position?

159 A. He had his arm against the glass.

(Witness continuing)

I kicked in the screen door. I couldn't say exactly how long it took me. It was approximately a few seconds.

Q. Did it open very easily?

A. I kicked it open.

(Witness continuing)

Then I went in this vestibule. Then I kicked the glass out of the inner door. I had my shoes on at that time. They were laced. I had on a sport jacket and
160 a pair of pants, that's all.

Q. Mr. Riccobene, will you take the pointer and point to this plate glass window in front of the store.

(Thereupon the witness stepped down from the witness stand)

The Witness: Which plate glass window?

Mr. Doherty: The front plate glass window.

A. This is the plate glass window. (indicating it)

Q. Yes. Is that the front plate glass window—how many windows are there?

A. One, two and a small one.

(Thereupon, the witness resumed the witness stand)

Mr. Doherty: Mr. Riccobene, did you ever make a statement that you pulled Vincent Ciucci out of the plate glass window in front of the store?

A. I never made no statement that I pulled—

Q. Did you pull a person out of the plate glass window in front of the store?

A. No, sir.

Q. You deny that statement?

161 A. I deny it, yes, sir.

(Witness continuing)

I was at the coroner's inquest. I believe it was that Monday or Tuesday. It was about the 7th. I testified. I raised my right hand before God and swore to tell the truth. I did tell the truth.

Mr. Doherty: Page sixty. Q. Now, were you asked the following questions: "Q. Anything you want to say, or that you know relative to that side door—where these bodies were still there, that is important to me? A. Well, as far as the side door, someone said it was a side door to this,—as I pulled Mr. Ciucci through the glass window from the front
162 of the store. Q. You pulled Mr. Ciucci out, you did? A. We took—we kicked the front window in.

Q. You kicked the front window in? A. Yes, with the assistance of some others who was around, we pulled him out, we laid him on the floor, and he said: 'My wife and children are in there, kids in there,." Q. Were those questions asked of you?

A. That's right.

Q. And did you make this answer?

A. That's right.

Q. Now, you just told the jury that you had shoes on?

A. Yes, sir.

Q. Shoelaces were tied, is that right?

A. Yes.

Q. Did you ever make a contradictory statement before this, as to that fact?

A. Not that I remember, no.

Q. At the coroner's inquest—on page sixty-two; 163 this is the preliminary question: "Q. Was the door locked, were you immediately able to open that side door? A. No, with the fellows' force, forced it to get in, we finally broke it open. We had to break it open, and I asked for a coat there for myself as I had on a sport jacket, no undershirt, house-slippers and pants." Q. Did you make that answer at that time?

A. I believe I did, yes sir.

Q. When were you telling the truth; then or now?

Mr. Papanek: Object.

The Court: He may answer.

The Witness: Will you repeat that question. I didn't get it.

(Question was read by the reporter)

The Witness: I would like to say something, your Honor.

Mr. Doherty: Just answer the question.

The Witness: That cannot be answered yes or no.

Mr. Papanek: That is exactly why we objected.

Mr. Doherty: I am objecting to the speech by the state's attorney, and I want to be heard.

(Whereupon the following proceedings were had in chambers out of the presence and hearing of the jury, to wit:)

Mr. Papanek: I have objected to counsel's question, "Were you lying then or lying now?", because your Honor well knows from the description of house-slippers, as of today, and shoes, that you can't tell certain kinds of shoes from house-slippers and certain kinds of house-slippers from shoes.

Mr. Doherty: May I answer that.

The Court: You can bring that out on re-direct examination.

Mr. McGovern: The basis of the objection to the question, were you telling the truth or were you lying, you are asking the witness to pass upon his own credibility. You are asking him for his own conclusion as to what is an allegedly contradictory statement. You are asking him to do something which is the function of the jury to do.

The Court: He can answer yes or no because if he is not lying he can say he was not. As to whether he has been impeached is the function of the jury. I am going to let him answer.

(Whereupon, the following proceedings were had within the presence and hearing of the jury, to wit:)

The Court: Read the question.

(Question read by the reporter as follows: "When were you telling the truth; then or now?")

The Court: He may answer.

The Witness: But I haven't heard the question. What is the question?

Mr. Doherty: May we respectfully move that the remarks be stricken from the record. If the witness doesn't know what the pending question was, we will refresh his recollection. Mr. Reporter, read it.

166 (Record read by the reporter as follows: "Q. Was the door locked, were you immediately able to open that side door? A. No, with the fellow's force, force it to get in, we finally broke it open. We had to break it open, and I asked for a coat there for myself, as I had on a sport jacket, no undershirt, house-slippers and pants." "Q. Did you make that answer at that time? A. I believe I did, yes, sir. Q. When were you telling the truth; then or now?")

The Court: He may answer.

The Witness: Both times.

Mr. Doherty: I move that the answer be stricken as not responsive.

The Court: It may stand.

Mr. Doherty: Q. Now, did you, at that time, at the coroner's inquest, say that you had bedroom slippers on?

A. That I don't remember, no. Your Honor, may I say something here.

Mr. Doherty: I am objecting to that, if the court
167 please. He is here to answer questions under oath.

The Witness: There are certain questions you can't answer yes or no.

(Mr. Doherty objects to the speech by the witness and asks that his Honor admonishes the witness)

The Court: Mr. Witness, you will answer the questions as put to you by counsel, and under the law you are not permitted to volunteer any statement or put questions yourself.

The Witness: Your Honor—

The Court: That's all right, Mr. Witness; would you like a recess at this time, or do you have any more questions?

Mr. Doherty: I don't require a recess, your Honor.

The Court: Irrespective of your requiring it, it is 3:30 and the jury has been in the box for some time.

Mr. Doherty: Yes, I know that, but you were asking me, do I want a recess, Judge, I will be governed by your Honor's ruling.

The Court: Unfortunately the court didn't make itself clear. The court had in mind you had a number of questions you wanted to put to this witness, this is under cross examination, and the jury having been
168 in the box for some time, perhaps this might be an opportune time for recess.

Mr. Doherty: Whatever your Honor wishes.

The Court: I was trying to accomodate your wishes, too, as to whether you wished to continue the matter with the witness or take a recess for the convenience of the jury.

Mr. Doherty: May we have this one question settled now, before we have a recess, if we may, please.

Q. This is the answer that I am talking about. (indicating)

Mr. Papanek: Object, if the court please.

Mr. Doherty: Read it to yourself.

The Court: The objection is sustained.

Mr. Doherty: Q. Does that refresh your recol-

lection, sir, to see the word "house slippers" in the transcript?

Mr. Papanek: Object.

The Court: Mr. Doherty, the objection was sustained and you will please read to the witness anything you may have out of transcript.

Mr. Doherty: Q. Was part of your answer, sir, "I had on a sport jacket, no undershirt, house slippers and pants"?

Mr. Papanek: Object as having been answered, if the court please.

169 The Court: He may answer.

The Witness: It could be, yes.

Mr. Doherty: Was it?

A. Well, I wouldn't remember.

Q. Did you at that time testify that you had on house slippers?

A. I don't remember if I did or not, your Honor.

(Whereupon the following proceedings were had outside the presence and hearing of the jury, to wit:)

The Court: The witness is instructed he is under cross examination and he is not to speak to anyone about the case during the recess. We will now have a ten minute recess.

(Whereupon, a ten minute recess was had after
170 which the following proceedings were had within the presence and hearing of the jury, to wit:)

(Witness continuing)

I was in the vestibule when I pulled the person out of the premises. A fellow by the name of Charles Fellows was in the vestibule with me. There was only

one person; it was Charles Fellows. I would say Charles Fellows was about five foot nine, about 140 pounds and has a scar on his face. I believe it is on his left side, a long scar.

Q. Now, did Mr. Fellows come to your assistance after you had pulled this person out of the inner door and into the vestibule?

A. No, sir.

Q. Well, when did he come to your assistance?

A. When I was pulling him, I didn't have him out yet.

Q. What did you do with the person that you pulled out of the burning premises?

A. Set him on his feet.

171 Q. How did he appear to you; was he hysterical?

A. No, he didn't say anything.

Q. Did he appear to be hysterical?

A. Not at that time, no.

Q. Was he cut?

A. He had sort of a cut or blood across his chest.

Q. Pupils of his eyes dilated?

A. I couldn't say that.

Q. Were they pinpointed?

A. I couldn't say that.

Q. Did he appear to be metally confused?

A. He could have been, yes.

Q. Was he coughing?

A. No, sir.

Q. Did he appear to be in pain?

A. He let out a moan when we pulled him through.

Q. Did that indicate to you he was in pain?

A. Yes, sir.

Q. Did you see this man right here, Vincent Ciucci; did you see him on December 6th, 1953?

A. Not that I know of, no, sir.

Q. You were present at the coroner's inquest, is that right?

A. Yes, sir.

Q. That would be about December 7, 1953?

172 A. About that, yes, sir.

Q. Well, was Vincent Ciucci at that inquest?

A. No, sir.

Q. Do you know, of your own knowledge, why he was not there?

A. I don't know, sir.

Q. Was testimony inserted during that hearing that he was in the County Hospital and unable to attend—

Mr. Papanek: Object to that, your Honor.

Mr. Doherty: I haven't finished.

The Court: You may finish.

(Mr. Doherty continuing)

—which opinion was concurred in by the coroner's physician, Dr. J. J. Kearns?

Mr. Papanek: Object.

The Court: The objection is sustained.

(The witness continuing)

I didn't see Vincent Ciucci on December 7th. I didn't see him on the 8th. I don't remember if I saw him on the 9th of December 1953 or not. I don't

173 remember that.

On the 9th of December 1953, that was the first time that I saw Charles Fellows subsequent to the incident I have testified to. And I first saw him on the steps coming into this building. I spoke to him first, I believe. I said to him at that time "you are the fellow that helped me pull that guy out of the

fire", or words to that effect. I would say I was not in the vestibule more than ten or fifteen seconds when I was pulling the person out that was trapped in there. After I pulled him out on the sidewalk, I went back into the vestibule. I kicked at this door. I tried to kick it down. I don't know if it was a
174 heavy door, but glass door, glass in wood. It was a commercial door as distinguished from an ordinary door in a premises.

Q. And you were kicking it in with bedroom slippers?

A. No, sir.

(Witness continuing)

After the heat drove me out of there, I heard the defendant say that his wife and kids were still in there. That is the first time that I knew there were other people in the premises. The reason that I went back into the vestibule the second time was to see if someone else was right there where he was at. I didn't see anybody. After he told me that his wife and kids were in there, I attempted to enter the premises through the front window, that is the plate glass window. I ran into the store about ten feet
175 and I was driven back by a flash of fiame. I wouldn't know how long that took me. I would say no more than thirty seconds because I was in and out of there pretty fast. I did not inhale any smoke while I was in there. I was not in pain after that flash of flame drove me back. I was sick afterwards. After that flash of flame drove me out of the store, I got out on the street, on the sidewalk and someone said there was a side door on Albany Street side, so I

went to the side door with some more fellows. There were about four or five at that time. They were just ordinary fellows. One was a great big fellow, about
176 six foot four or five. I wouldn't know how they were dressed. I wouldn't know if they had moustaches. They were white. The four or five I seen were white. I have not seen any of those men since then.

Q. And you say you were kicking this Albany Street door?

A. Yes, sir. I wasn't kicking it, no.

Q. Sir?

A. I didn't say I was kicking it.

Q. Who was kicking it?

A. The great big fellow did kick at it.

(Witness continuing)

It was a metal door. I don't know if it was hot.
177 I wouldn't know if the metal in the door had swollen. It took less than a minute to kick that door open. When the firemen arrived I was out in the street. There were policemen at the scene asking questions. They questioned me. I do not know the names of the policemen that questioned me there. I wouldn't know exactly what time that was, but it was before three o'clock.

Q. Now, at that time, you told the police you didn't know anything about it, isn't that right?

A. I told them I wouldn't give them my name.

Q. You didn't tell them that you pulled someone out, did you?

A. No, sir—oh, yes, I did. You are confusing me here.

Mr. Doherty: I don't intend to do that.

178 Mr. Doherty: Will you read the question back.

(Whereupon the reporter read the last question)

The Witness: I told him I assisted taking someone out.

Q. Did they ask you for your name?

A. That's right.

Q. And what did you tell them?

A. Just told him my name was Joe.

Q. Joe what?

A. I didn't give no last name.

Q. Is your name Joe?

A. No, sir.

Q. Then that wasn't true, was it?

A. I just didn't want to be involved.

Q. Sir, answer the question. Do you understand the question?

A. It wasn't the truth.

Q. It was a lie, wasn't it?

A. That's right.

Mr. Papanek: Object, if the court please.

Mr. Doherty: Q. Now, do you also—

79 The Court: Just a minute. The objection is sustained. He answered the question that it was not the truth. The objection to the statement as to a lie is sustained. You may proceed.

Mr. Doherty: Q. But it was not the truth, is that right?

Mr. Papanek: Object. He has already answered that.

The Court: The objection is sustained. He has answered that question.

(Witness continuing)

I told those policemen that I lived near Kedzie Avenue. At that time I lived at 3044 West Harrison.

It is about a block away from Kedzie. I did not tell them I lived at 3044 West Harrison. I didn't want to have anything to do with it. After I talked to the policemen at the scene, I went home. The next time
180 I talked to the police was the same day, when somebody told them who I was. That was on December 5th, about four o'clock in the afternoon at my home. There was two or three policemen there at that time. I don't remember their names. The police talked to me after that. They talked to me that night. I made a statement that night at the police station, Mar-
181 quette. It was a written statement. I was not in custody at that time. I talked to the police the next time on the following day. I talked with them for about twenty minutes at the station. I was not in custody at that time. I went there myself. They called me and asked me to come down. The police department called me. I don't know the name of the officer that called me. It was at the switchboard. I made two or three statements in writing. I did not receive copies of them. That's the last I remember talking to them.

Q. Well, for one week following this occurrence, they talked to you about everyday, isn't that right?

A. No, that's not right.

182 Q. Well, how many times did they talk to you in that following week?

A. I wouldn't know exactly, four or five or six.

(Witness continuing)

On December 5th, 1953, my address was 3044 West Harrison. I had lived there about three months.

Q. Before that where did you live?

Mr. Papanek: Object, your Honor, as being immaterial.

The Court: He may answer.

Mr. Doherty: Where did you live?

A. State penitentiary, Joliet.

Q. How long were you there?

Mr. Papanek: Object.

The Court: He may answer.

The Witness: About twelve years.

Mr. Doherty: You were convicted of four counts of armed robbery, is that right?

A. That's right.

Q. Was that robbery with a gun?

Mr. Papanek: Object, your Honor, as immaterial.

The Court: He may answer.

183 The Witness: Yes, sir.

Mr. Doherty: Was the gun loaded?

Mr. Papanek: Object.

Whereupon, discussion was had between court and counsel in chambers, outside the presence and hearing of the jury and off the record, after which the following proceedings were had in chambers outside the presence and hearing of jury, to wit:)

The Court: The objection is sustained.

(Whereupon the following proceedings were had within the presence and hearing of the jury, to wit:)

The Court: Let the record show that the objec-
184 tion to the last question put to the witness has been sustained.

Q. Mr. Riccobene, did you file the shear of your gun to make it hair trigger?

Mr. Papanek: Object.

The Court: The objection is sustained, and the

jury is instructed to disregard the question and counsel is instructed not to ask questions of that kind.

(Witness continuing)

At the present time I am a barber. I have been a barber about twenty years. It was about fourteen hours after the fire that I was questioned by the police at my home. I was on parole on December 5th. My sentence was one to life. I called my parole
185 officer. That was in the afternoon, sometime, a little after three. That was not before the police came, it was after the police came. The police got there a little after three. The name of my parole officer is Sam Bonifede. Prior to December 5th, 1953, I last reported to my parole officer on December 4th, about 8:30 that night. It was at my home. He comes to my home. When I called my parole officer, he wasn't
186 there. I saw him the following day, on a Sunday. It was in the afternoon at my home. I talked with him about a half-hour. I told him I had been questioned by the police. The parole laws require that.

Q. Did he ever tell you to cooperate with the police?

A. Never told me no such thing.

187 (Witness excused)

CHARLES FELLOWS called as a witness on behalf of People, sworn, was examined, testified as follows:

Direct Examination by Mr. Papanek.

My name is Charles Fellows. I live at 4848 Evans. I live with Daniel Green. I drive a tow truck. I am employed by Charles Fein. The name of the company

is the Harrison Auto Construction Company. The place of business of that company is 3131 West Harrison. I have worked at that place of business
188 since 1948. My duties have been those of a tow truck driver, since 1945. I work from 10:30 at night until 8 o'clock in the morning. I have worked that shift since 1945. With reference to Albany and Harrison Street, the address I gave is west of Harrison. It is about 300 or 350 feet west from the corner of Albany
189 and Harrison Street. It is on the south side of Harrison. That is on the same side as the grocery store on Albany and Harrison. I was at my place of business on the night of December 4th and the early morning of December 5th. I reported to work on the night of December 4th at 10:30. On the morning of December 5th shortly after 2:00 A.M. I was in the office in the front. It is an office in front and driveway. In the front of that building in the office there is a
190 big glass about fifteen feet wide. There are two plate glass windows. That window faces immediately on Harrison Street. The entrance to that garage is in the drive. The driveway is on the east side of the office. The driveway just runs and makes a circle in front of the building. The door is on the drive. That is on the east side of the building. That doorway is about five feet from the sidewalk on the south side of
191 Harrison Street. At 2 A.M. or shortly thereafter, the boy I work with, Louis Yarboro, was with me. Something unusual happened at that time. A fellow came by in a car and stopped and said the corner building is on fire, a man trapped, call the fire department. I was in the office with Louis Yarboro. We both ran to the sidewalk and we looked east and we could see smoke coming from the corner. I told Louis Yarboro

to go back and call the fire department and I ran east. I ran to the corner of Albany and Harrison. As I was running toward the corner of Albany and Harrison, I was on the south side of Harrison Street.
192 That is on the same side of the street as my place of business. As I ran toward that corner, I saw two men throwing at the windows at about the corner of the intersection of Albany and Harrison. They were throwing at the corner building; that would be the southwest corner. It is a store, grocery store. I observed at that time, as I ran to that corner that those
193 windows were intact. I ran around to the door of the store. The door is at the corner of the building, right on the corner.

(Thereupon, the witness stepped down from the witness stand and over to People's Exhibit 1.)

Mr. Papanek: Will you indicate to the court and the ladies and gentlemen of this jury where that door is that you are referring to.

A. Here. (indicating)

Q. That would be the corner of the building at the southwest corner of Albany and Harrison Streets, is that right?

A. That's right.

(Witness continuing)

194 I could see a man in there. In this vestibule. (indicating) He was trying to pull another man through the door, the glass door. This second man was inside of the store. I ran in there and helped him pull him through the door. This man what was in there had his arms around him, trying to lift him through the door and I put my arms around him on this side of him and helped pull him through the door. The

man in the vestibule was dressed. I observed how the person was dressed who was inside of that inner door. He was dressed in shorts. He had no other articles of clothing on. We pulled him through the door and we laid him out on the sidewalk. I now know who assisted me in moving this person through that doorway. It was Riccobene. I have seen him since that morning of December 5th. I had never seen him before that particular occurrence. I now know who the man was that was dressed in the shorts that I pulled through the opening of that door. The fellow sitting there with the light coat on.

Q. You are indicating for the purpose of the record the defendant, Vincent Ciucci, Sr., is that right, sir?

A. That's right.

(Witness continuing)

After we took Ciucci out of that vestibule, we laid him on the sidewalk. I turned him loose. I ran around on the Albany Street side. I ran around here, (indicating) to Russell's office. I looked to see if his trucks were on fire. They weren't on fire. I came back to the front. This fellow we pulled out of the door, he was lying on the sidewalk. And a lady came across the street with a coat and she said, "don't let him lay there like that, put this coat over him." And so some fellow, a colored fellow, taken her coat from her and put it over him. After that the windows went out. The plate glass windows. These windows. (indicating) Along the Harrison Street side and Albany Street side. Prior to that I noticed the plate glass windows on the Albany Street side. I first noticed those windows when I went to Russell's office. They were

intact. After this coat was put over the defendant, the lady said, "don't let him lay there like that, pick him up and carry him across the street." So I and this other fellow that put a coat over him, picked him up and carried him across the street to a store-front. That is at the northwest corner of the inter-
199 section. Then I laid him in front of the store. I came back out of the store. There was a lady standing there crying and she said, "Ann and her kids are still in there." I heard the woman say this on the northwest corner after I came out. That is still on the north side of Harrison Street. Then I ran back across the
200 street to the Albany Street side (indicating) to the door. I am referring to this door (indicating) (indicating the door at the right side of the room marked, "front bedroom") There was four or five fellows there trying to knock and kick the door in. I recognized the fellow that I helped to pull this fellow out of the front door. That is Riccobene. These four or five men kicked at the door and some tall fellow finally kicked the door in and then this fellow, Riccobene, he put a coat over his head and he tried to go in there and the flames drove him back, and another fellow
201 started and the flames drove him back. So we stood back, and waited for the fire department. The firemen arrived .

(Thereupon the witness resumed the witness stand)

(Witness continuing)

Before the morning of the 5th day of December, 1953, I never went into that store at the corner of Albany and Harrison Streets. I had never seen the defendant, Vincent Ciucci, Sr., prior to seeing him

there in his shorts. I had never seen Anthony Riccobene anytime prior to seeing him in that vestibule when he and I pulled out the defendant.

202 *Cross Examination by Mr. O'Donnell.*

I did not say that when I was in the front office of the garage on the early morning of December 5th, 1953, I did not say I was seated. I was in the office. It was around two o'clock when this car drove up on the street and I heard hollering. The garage is located about 300 or 350 feet from the corner, the southwest corner of Harrison and Albany. I could see the car through the plate glass window pull up in front of the garage. And I heard him holler. After
203 I heard him holler, we ran out on the sidewalk. The car stopped for a minute. In relation to the garage, it stopped in front of the plate glass window. A white fellow was driving the car. I did not recognize him. I could see his shoulders. He had on a light shirt, seemed to be a fellow about 28 or 29 years old. I don't know if he had a hat on. I thing he stopped there just for a second, long enough to holler. The car was going west. The fire on the corner was east of where I was. He was driving a black car. It was dark, I
204 don't know whether it was blue or black. I did not know what kind of a car it was. I don't know if it was a Ford. It was a small car. I have been in the garage business since 1924. After I ran out on the sidewalk, I stated that I looked east. I could see
205 smoke. The smoke was coming from the corner building. The color of the smoke seemed to be white. There was quite a bit of smoke. I told him, the boy, I asked him to go back and call the fire department and I ran east.

Q. I believe you stated you then ran to the corner near the entranceway on the southwest corner of Albany and Harrison and that you saw two men in the vestibule, is that right?

Mr. Papanek: Object, your Honor. That wasn't the testimony.

The Court: The objection is sustained.

Mr. O'Donnell: Well, as you ran east, 350 feet to the corner of Harrison and Albany, when you got there, what did you see?

A. I saw two men throwing at this window.

(Witness continuing)

I passed those men and went around to the door. And I could see two men, one man trying to pull another man through a door and I went in and gave him a hand. I did not recognize any of them at that time. There were no lights on in the store. There was no light on in the vestibule. There were only two men. I helped pull this other fellow through the door and led him out to the sidewalk. I did not talk to either of them. With reference to the condition of the fellow I helped out of the inside of the store, he had
207 his head down, his arm over his head like this. (indicating). He seemed to be moaning. After we pulled him through the door, he was bleeding. He was mostly moaning. He appeared to be in pain. Inside the door, there was quite a bit of smoke. There was not at that time quite a bit of confusion outside the vestibule. We led this man whom we had just pulled out on the sidewalk and I turned him loose. I didn't
208 lay him on the sidewalk. I led him out on the sidewalk. I did not talk to him then. I did not talk to the other fellow who helped pull him out. I then ran around to the Albany Street side to the back of the

store. I ran around to the back of the office. I said that I went around to the back to see if the trucks were on fire. I went all the way past the store, past another store, and office. I looked in the back to see
209 if the trucks were on fire. There were three trucks there.

Q. About how long do you think that took, in point of time?

Mr. Papanek: Object to the form.

The Court: The objection is sustained.

(The witness continuing)

I don't know how long it took me to run from the front of the store to the back of the building and to look at the trucks and return to the front of the store. I would say it was approximately three or four seconds. With reference to the condition of the plate glass windows in the front of the store, when I
210 returned from looking at the trucks they were in. I did not see Riccobene there then.

Q. How long did you stay in the front of the store?

A. Well, the lady handed the boy a coat and he put it over him and she said, "Pick him up and take him across the street".

(The witness continuing)

I imagine that took four or five seconds.

Q. Did you testify that the windows were out while you were standing there, is that right?

A. After I came back.

Q. Yes?

A. They went out.

Q. After you were in the front there, somebody—I would like to have that answer again.

(Witness continuing)

After I came back from the side the lady handed this fellow a coat, he laid the coat over him. That is when the window went out. That was while I was standing in front of the store. After the lady said, "pick him up and take him across the street" we
211 picked him up and carried him across the street. By "we", I mean myself and another colored fellow. We took him across the street to the northwest corner, in a storefront where some people live. It is on the northwest corner. We laid him on the floor in the store. We just laid him down and came right on out. Then I came out of the door, I was standing there a few minutes, at the front of the place where we carried him in. I did not see Riccobene when I came out of the store. The next time I saw him was when I ran back across the street to the door on the Albany
212 Street side. I did not know any of those men who were there. I have only seen Mr. Riccobene since.

Q. Where did you next see Mr. Riccobene?

Mr. Papanek: Object to the form of that inquiry.

The Court: He may answer.

The Witness: When I ran back across the street, I was at the Albany Street side.

Mr. O'Donnell: You saw him after that?

A. I saw him after the fire.

(Witness continuing)

I saw him standing back. We were all standing back. After the early morning of December 5, 1953, the next time I saw Mr. Riccobene, he was coming in this building. It was about a week later, a week after
213 the fire, a little better than a week after the fire. When

I first saw him he was coming up the steps in front of the building. I did not recognize him then. He recognized me. He said, "you are the fellow that helped me pull the fellow out of the store?". I said, "yes". I didn't say hello, I said, "yes", when he asked me a question. I did not recognize Mr. Riccobene before he spoke to me. Until he told me that he was the man that helped pull that man out of the vestibule, I didn't know it. I was behind, I was walking
214 behind him. I didn't know. He turned around when I came up the steps.

Q. Did you see his face?

A. When he turned around.

(Witness continuing)

After he spoke, I recognized him.

Q. Only after he spoke to you were you able to recognize him, is that right?

Mr. Papanek: Object to the form.

The Court: The objection is sustained.

Mr. O'Donnell: Then, until he did speak to you, you did not recognize him, is that right?

A. That's right.

(Witness continuing)

He asked me where I was going and I told him I was going upstairs, going to the Grand Jury room. I went to the office of one of the Assistant State's Attorneys
215 on that date. Assistant State's Attorney Papanek was there. There was also a typist, or man taking notes. It was a shorthand reporter. Mr. Papanek asked me questions and I gave answers. The shorthand reporter was typing. I did not sign anything while I was in the State's Attorney's office. I did not get

a copy of what transpired. I was not in the office long. I imagine about half an hour. The light was
216 on in that office. I imagine I was about two or three feet from the shorthand reporter.

Q. Would you recognize that shorthand reporter if you saw him again?

Mr. Papanek: Object to the form.

The Court: He may answer.

The Witness: Yes.

Q. Did you know his name?

A. No.

Q. Did you appear in the courtroom of Judge Dempsey in March of 1954?

A. Yes.

(Whereupon the following proceedings were had
217 outside the presence and hearing of the jury, to wit:)

(The court instructed the witness not to discuss this case with anyone during the recess. Whereupon a recess was had after which the following proceedings were had within the presence and hearing of the jury, to wit:)

(Witness continuing)

I appeared in a courtroom in this building in March, March 8th, 1954, before his Honor, Judge Dempsey, and at that time I was sworn to tell the truth. I did tell the truth.

218 Q. Mr. Fellows, were these questions asked of you and did you make these answers:

(Whereupon questions and answers were read. The last answer showing that on a prior date the witness had testified that he would be unable to recognize the shorthand reporter if he saw him again.)

Mr. Papanek: Object, your Honor, as to nothing
219 being impeached on anything at all in the testimony.

(Whereupon the following proceedings were had in chambers, outside the presence and hearing of the jury, to wit:)

Mr. Papanek: In the first place, it isn't impeachment on anything he has testified to at this time. Secondly, it is certainly not impeaching in any sense under any circumstances on any material point.

The Court: I would like to hear from you, Mr. O'Donnell.

Mr. O'Donnell: This witness testified—I feel that this witness is an important witness from the standpoint of recognition. That was my entire basis for this entire line of questioning.

The Court: Recognition of what?

Mr. O'Donnell: He testified that after a few brief minutes, without talking to Mr. Riccobene in the vestibule on the night of the fire, that he knew Mr. Riccobene, that he knew it was Mr. Riccobene. I am trying to show that if he sat for half an hour in a small office with Mr. Papanek and a shorthand reporter who was writing it down and after half an hour—In his original statement, he said he couldn't recognize that man.

220 Mr. Papanek: What difference does that make?

Mr. O'Donnell: Now he says he would recognize him.

Mr. Papanek: How does that impeach him in any way? That is what I am trying to figure out.

The Court: Do you want to say anything more?

Mr. Doherty: We are seeking here to test the credibility of this witness under the scrutiny of cross examination.

Now, there are two ways in which we can impeach him; to show he was convicted of a crime and to show he made a previous contradictory statement. Now, the previous contradictory statement, your Honor, is that when Mr. Toudor asked him, "well, no, that shorthand reporter, was that a man or a woman?" "A man." "Would you recognize him if you saw him again?" And he said, "no." Now, it is contradictory in this sense; Mr. O'Donnell asked him here, "would you recognize this man if you say him again?" He said, "yes". Now, if that is not contradictory, I then, Judge, don't know the meaning of the word contradictory.

The Court: The court feels first, that it is not impeachment, it is not impeachment on a material matter, but the questions that were put may stand
221 for the purpose of showing that at one time he could and at another time he said he couldn't.

Mr. O'Donnell: May I ask him when he was telling the truth, when he said he couldn't recognize him or now, when he said he could recognize him?

Mr. Papanek: Again, that same question was put and we argued it, your Honor, the impropriety of being permitted to ask the witness that question at any time, if the court please.

The Court: What question?

Mr. Papanek: What he proposes to ask the witness. We objected to that once before.

The Court: You mean of this other witness?

Mr. Papanek: Yes, Judge. That question, your Honor, I respectfully urge is improper and should never be permitted to be asked of any witness, if the court please at this time.

The Court: As to whether he is correct then or now?

Mr. Doherty: He was telling the truth.

Mr. Papanek: Whether he was telling the truth then or now.

The Court: That, again, I have felt is discretionary with the court. In this instant the court will rule with the state and not permit that question to be put
222 to the witness.

(Whereupon the following proceedings were had within the presence and hearing of the jury, to wit:)

The Court: Objection is overruled.

Redirect Examination by Mr. Papanek.

Q. Mr. Fellows, directing your attention to the windows on either side of the vestibule, at the corner of the property at 3101 West Harrison, when you went into that vestibule and you there saw Anthony Riccobene, were those windows intact or no?

Mr. Doherty: Object as being improper redirect.

The Court: He may answer.

223 The Witness: They were intact.

Recross Examination by Mr. O'Donnell.

Q. At the time that you came back from the rear of the building, Mr. Fellows, what was the condition of the windows?

A. When I came back from the rear of the building?

Q. From looking at the trucks?

A. They were intact.

(Witness excused)

224 (Thereupon bailiffs were sworn after which an adjournment was had until the next day, January 7, 1955.)

225 Friday, January 7, 1955.
Morning session, 10:15 o'clock A.M.
Parties Present: Same.

(Whereupon the following proceedings were had within the presence and hearing of the jury,
226 to wit:)

JAMES CONTE, called as a witness on behalf of people, sworn, examined and testified as follows:

Direct Examination by Mr. McGovern.

My name is James Conte. I live at 834 South Oakley Boulevard. I am employed by the Chicago Fire Department. I hold the rank of Captain. I am assigned
227 to Engine 66. That is at 2858 Filmore Street. I was so assigned during the early morning hours on December 5th, 1953. On that date, I went to a fire at 3101 West Harrison Street, Chicago. When I arrived there, I observed a one-story building on the southwest corner that was on fire. I ordered my men to stretch a line from in front of the building, and as they were doing that, I heard somebody say there were children in the rear of the building, so I went to the side entrance on Albany Street to see what could be done there, and I saw the largest amount of fire was in the rear of the building so I ordered my men to bring the line in the rear.

228 (Thereupon, the witness stepped down from the witness stand, takes a pointer and goes to the plat)

(Witness continuing)

The apparatus was pulled up to a hydrant right on the corner here. (indicating)

Mr. McGovern: Indicating for the purpose of the record the southwest corner, is that right, sir?

A. That's right. I ordered my men to stretch a line into the front entrance and when I heard somebody say there were children in the back I came back down the side to this entrance. (indicating) To this entrance here on Albany Street. When I got there, I noticed that there is a screen door here (indicating), that was closed, we had to open that and this inner door was open about three-quarters.

(Witness continuing)

29 I ordered the men to bring the line down here. (indicating) I opened the screen door and looked in and I could see a body lying on something inside the door. I tried to reach in to get the body, but the whole room was in flames and I had to back out. I couldn't get in. We had to wait until we got the water and we had a line back here. (indicating) Then I ordered the men to draw the stream of water and another fireman and myself kneeled or stooped here. (indicating) After it had come down a little bit, we reached in and grabbed the mattress and pulled it towards the door, tried to get closer so we could take the body out. We later entered that room through the Albany Street door. We entered, after it had come down enough. We couldn't reach the body. After it come down enough, we went in there and when we went in, we entered that front bedroom as indicated on the plat. When I entered, I noticed this body supposedly

230 of a woman, lying across, crossways on the bed. The head was pointed to the east and the feet were pointed to the west, and the legs were bent over the side of the bed, at the knees. The arms were upright, in an upright position, pointed to the ceiling. It was the body of a woman. The entire body was charred, the stomach was split open from burning; the hands were split from burning.

(Thereupon the witness resumed the witness stand)

The body was later removed. I arrived at the fire at
231 approximately 2:10 A.M. We got the alarm at about 208 A.M.

Cross Examination by Mr. Doherty.

I received the alarm at 2:08 A.M. I arrived at the scene at approximately 2:10. The first place that was watered was the Albany Street bedroom. That took less than a minute.

Q. You were able to enter the premises before 2:11, isn't that right?

A. No, about 2:12.

Q. The screen door wasn't bolted, was it?

A. No, it wasn't.

Q. It wasn't damaged, was it?

A. I don't recall if it was or not.

232 Q. Now, after you had the fire out, you had occasion to observe the Albany Street door, didn't you, the inner door, is that right?

A. I didn't pay too much attention to it.

Q. It was a metal grated door, wasn't it?

A. Yes, it was.

Q. And the outside of the door was badly charred,

isn't that right?

A. I don't recall.

Q. And the inside of the door hadn't been hit by much fire, isn't that right?

A. That's right.

(Witness continuing)

And the door frame around that door was badly charred. I didn't notice whether there was any physical damage to it. When I arrived upon the scene the screen door was closed.

Q. And the inner door was wide open, isn't that right?

A. About three-quarters of the way open.

Q. Did you ever make a statement that it was wide
233 open prior to today?

A. I don't believe I did.

(Witness continuing)

I was at the coroner's inquest on December 7th. I testified. I answered the questions propounded by the coroner.

Q. On page 37, there was a question asked of you:

"Q. The mother's five and the children is about ten, is that right?"

That was in reference to the distance from the door, and your answer:

"A. Yes, and this door was wide open when we arrived at the scene. We didn't have to open it. It was a screen door close, I opened the screen door, the inside door was wide open.
234 Q. You are talking about the Albany side, right? A. Yes. Q. There is a screen door and what else there? A. Metal windowed door. Q. It

was not bolted? A. No, sir, it was wide open. Q. When you people got there? A. Yes. Q. And you were there two minutes after the fire? A. No more than two minutes before we arrived. Q. This door was wide open when you got there? A. Yes, sir."

Mr. Doherty: Does that refresh your recollection, Captain?

Mr. Papanek: Object as not being in any way impeaching.

Mr. Doherty: I am not trying to impeach this witness. I am merely trying to refresh his recollection.

Mr. Papanek: I submit that this is all something that is quibbling over words and nothing more and I am objecting to this line of interrogatories, your Honor.

Mr. Doherty: I object to the speech and the choice of the State's Attorney's words. I move that they be stricken from the record and the jury be instructed to disregard them.

The Court: The remarks will be stricken from the record and the jury instructed to disregard them. The witness may answer the question.

(Question read by reporter)

The Court: He may answer.

The Witness: I don't recall making the statement, but I guess if I did make it, I made it, but it was in reference to the front door, to the front or side door I made that statement.

236 (Questions and answers as appear above were reread by reporter)

The witness: I still don't recall making the statement. I guess I did.

(Witness continuing)

Immediately after that, Mr. Irwin Bloch, the First Assistant States Attorney asked me questions and
237 I made answers.

Q. Yes, now, on page 38, question by Mr. Bloch:

"Q. You also mentioned that Albany side door was wide open. A. Yes. Q. Did that door show evidence of having been kicked, or open as you found it? A. If it was locked on the inside, I believe the door can be kicked open, I don't know, the door was open."

Then Mr. Mullaney, whoever he may be, interposed a question:

"The screen door was locked, or if it was not locked, just closed? A. Just closed. Chief Mullaney: Closed? No, no hasp. Mr. Bloch: well, did the door, had the door been damaged any, in there? The screen door had not been damaged at all, sir, the screen door, don't know what it is made of, never any terrific violence, that is, no damage to the corner, to the inner door at all, if that is what you mean.

238 And then they talked about the body inside. Now, does that refresh your recollection?

Mr. Papanek: Same objection.

The Court: He may answer.

The Witness: I don't recall.

Q. How far inside the Albany Street door was the body of the person you testified you saw?

A. I imagine about five feet.

239 (Witness excused)

EUGENE MURPHY called as witness on behalf of people, sworn, was examined and testified as follows:

Direct Examination by Mr. McGovern.

My name is Eugene Murphy. I live at 4401 West End Avenue. I am a lieutenant on the Fire Department. I am assigned to the hook and ladder 12. That is located at 2256 West 13th Street. I was so assigned on the early morning hours of December 5, 1953. On that date in the early morning hours I went to a fire located at Harrison and Albany Street, Chicago. We arrived and the driver parked the hook and ladder there. I ordered my company to raise the ladder to the roof and ventilate the roof and the remainder of the company broke some windows in the front and side of the store section of the building and then went around to the rear of the building to see if we could gain access through the rear and found no opening and came through the front, or to the front and went through the front door.

(Witness steps down from witness stand and goes over to plat)

I entered the premises through the door; that would be the southeast corner—northeast corner of the building. When I entered the door, the door was shut and the glass was broken out of the door, stepped through the portion where the glass had been. We went through the store section back into the rear, in the kitchen section, to where we found a door at the southwest corner of the building. When I saw that door, that door was locked. I ordered members of my company to break the lock and open the door.

242 They did. Then, after opening the door, there was a body in the rear bedroom section of the building. I went in the rear section of the rear bedroom section of the building and saw a body, a child's body on a bed, on a cot-type bed. The body of the child was in this bed here. (indicating) I was able to determine the sex of the child only by the hair. I determined it was a boy. I observed that the body was laying face down on the bed and was badly burned and charred from the waist down and the upper portion of the body covered with a pillow. I
243 removed the pillow over the upper portion of the body and picked up the body and turned it over, handed it to another fireman in my company to give to the ambulance men, I believe. I noticed that the pillow underneath the boy's head was covered with blood.

The bed as I saw it on December 5th was in the same position I see it on the plat.

Q. Did you notice anything else in that rear bedroom, Lieutenant?

A. I turned around and behind me there was two smaller bodies on the larger bed in the center of the bedroom.

244 Mr. Doherty: Object.

(Whereupon the following proceedings were had in chambers outside presence and hearing of jury, to wit:)

Mr. Doherty: May it please your Honor, we are objecting to any testimony in reference to the other deaths, other than the death which forms the basis of this indictment, namely 54-839, and because of the inflammatory and prejudicial nature of the evidence

adduced by this witness, at this time, we respectfully ask your Honor to withdraw a juror and declare a mistrial.

The Court: What do you have to say, Gentlemen?

Mr. Papanek: Well, this is People vs. Murphy, which we had discussed, except not nearly as far as the Supreme Court had approved in the Murphy case which was a double murder by shooting. They indicated that not only were the circumstances of both the bodies admissible in evidence, but even as to experiments, as to whether or not certain kinds of firings could have been from the weapon which killed the victims in the case on trial, could have killed the
245 victim in the other case, in the other indictment. It is the same legal proposition that we discussed, your Honor.

Mr. Doherty: May it please your Honor, it is not necessary in the proving of the corpus delicti of this crime which is charged in this indictment that they go into the other deaths.

Now, they resisted our motion for a consolidation on the ground these were separate and distinct acts. If that is the case, the State cannot blow hot and cold. If they are, in fact, separate and distinct, then they do not form any part of the res gestae.

The Court: The motion will be overruled and the State will be permitted to proceed. As to your mo-
246 tion for the withdrawal of a juror, that motion is denied.

(Whereupon the following proceedings were had in the presence and hearing of the jury, to wit:)

(Witness steps down from witness stand and over to plat)

Mr. McGovern: Would you read the last question and answer, please?

(Whereupon the last question and answer was read)

Mr. McGovern: Now, Lt. Murphy, what, if anything, did you notice about the two smaller bodies?

A. Well, the larger of the two bodies was in a similar condition to the other one. The first body burned from the waist down and from the shoulder
247 blades up, covered with a similar bedspread, part of a bedspread, burned black from the shoulder blades down, and the smaller of the two bodies completely charred beyond recognition.

Q. Now, could you determine the sex of either of these bodies, sir?

A. The larger one by the hair, determined it was a female body. The smaller one, there way no way of determining.

(Witness continuing)

The smaller bodies were children. I handed the two smaller bodies out and they were removed to another fireman. I returned to that building at Harrison and Albany Street the same day about 11
248 o'clock. I entered the premises.

Q. And did you examine either of those two bedrooms, the rear bedroom or the front bedroom?

Mr. Doherty: Objection.

The Court: He may answer.

The Witness: Yes, sir.

Mr. McGovern: What, if anything, did you notice about either of those bedrooms with relation to burning?

Mr. Doherty: Objected to, if your Honor please.

The Court: He may answer.

The Witness: I noticed separate fires in the bedroom section.

Mr. Doherty: Object. Move it be stricken.

The Court: It may go out and the jury instructed to disregard it. Tell us what you saw.

Mr. McGovern: Well, can you indicate for the court and jury on the plat, what, if anything, you noticed?

A. I noticed fires in separate parts of the bedroom section.

Mr. Doherty: Objected to. Move it be stricken.

The Court: It may go out and the jury to disregard.

Mr. McGovern: With reference to the conditions of those bedrooms, sir, as to burning, what did you notice?

Mr. Doherty: Objected to as being leading and suggestive.

(Whereupon the following proceedings were had in chambers, outside the presence and hearing of the jury, to wit:)

Mr. Doherty: The objections that have been sustained are obviously on the ground that there is no
250. showing this man is an expert or an arson investigator and he is testifying to conclusions that there are five separate fires. That is a conclusion which can only be reached by showing he has attended an arson school and has had special training to ascertain the differences between preliminary and secondary causes of fire, relative to the combustibility of various materials.

That is the basis of that objection. He can't get it in, your Honor won't let him get it in by innuendo

and he is trying to get it in a different way, by leading and suggesting questions, and this is the basis of my objection.

The Court: I think the man can testify to what he saw and describe what he saw, but as to conclusions—

Mr. Papanek: I think we are a little premature getting that out.

The Court: Also, I think, although the court did not sustain the objection, I think the form of the question is objectionable, as to what he noticed. That again calls for an opinion or a conclusion. What did
251 he see. Maybe it is a play on words.

(Whereupon the following proceedings were had within presence and hearing of jury, to wit:)

Mr. McGovern: Lt. Murphy, you hold what rank with the Chicago Fire Department?

Mr. Doherty: Object as being repetitious.

The Court: He may answer.

The Witness: Lieutenant of Hook and Ladder Company 12.

Q. How long have you been a fireman, sir?

A. 15 years.

Q. During the time you spent as a fireman approximately how many fires have you attended?

A. During the time I spent as a fireman, I have attended approximately 10,000 alarms.

252 Mr. Doherty: Object as not responsive.

The Court: That may stand.

(Witness continuing)

I have participated in actively as a fireman about 5,000.

Q. Now, would you describe for the court and jury what you saw in either the front or rear bedroom at the time you returned to the premises on December 5th.

A. The charred sections of the rooms.

(Witness is asked to indicate these sections on chart)

(Witness continuing)

The charred sections were at the door on Albany Street side, near the floor, (indicating) in a charred section here (indicating) in the wall separating the store from the bedroom section. That was completely consumed with fire, that section.

253 There was a charred section in the floor part way up the separation between the front bedroom and the rear bedroom. (indicating) The charred section on the—that would be the east wall of the rear bedroom section. (indicating) There was a charred section on the floor underneath the larger part of the two beds in the bedroom section. (indicating)

Q. Now, when you say "charred", what do you mean by that, sir?

Mr. Doherty: Objected to.

The Court: He may answer.

The Witness: Burned deeply.

Mr. McGovern: Now, with relation to the rest of the room around the charred sections that you just pointed out, what was the condition of those sections?

A. Some were clean and other sections were just scorched.

Q. When you say "clean", Lieutenant, what do you mean by that?

Mr. Doherty: Objected to.

The Court: He may answer.

The Witness: They weren't burned.

(Whereupon the witness resumed the witness stand)

Mr. McGovern: Lieutenant, based on your experience as a fireman and upon your observations as you just described, do you have an opinion as to whether or not these charred sections that you saw were separate and distinct fires?

Mr. O'Donnell: Objected to.

(Whereupon following proceedings were had in chambers outside presence and hearing of the jury, to wit:)

255 Mr. Doherty: The basis of my objection, your Honor, is that there is insufficient foundation to qualify this man as an expert of any kind, in order to ask him for opinion evidence.

Mr. Papanek: Judge, an automobile mechanic may have been repairing automobiles for one year and have less formal education than grammar school, and because of his occupation and the testimony of his attendance and participating in the repairs of automobiles, he is an expert.

He is subject to cross examination to determine how much of an expert he is, as counsel may do if they wish, but the experience of fighting over 5,000 fires and answering 10,000 alarms over a period of fifteen years, if this man hadn't had any experience in determining and observing as to whether or not there is one fire, or five or six, or seven, or eight, then no one can, Judge.

256 The Court: The court will permit him to answer.

(Whereupon following proceedings were had in presence and hearing of jury, to wit:)

The Court: Read the question.

(Last question read by reporter)

The Court: You may answer.

The Witness: Yes, I would say they were.

Mr. McGovern: You would say they were separate and distinct fires, is that right, sir?

A. Yes, sir.

Q. How many were there, altogether?

A. Five.

Mr. Doherty: Objected to as having been asked and answered.

The Court: He may answer.

The Witness: I counted five.

Mr. McGovern: Lieutenant, would you please step
257 down from the stand just once more and take this pen and mark on this plat with the numbers one, two, three, four and five where those sections were that you have previously described, sir.

(Witness steps down)

Mr. Doherty: I am going to object to that, if the Court please, to marking this exhibit.

The Court: He may do so.

(Whereupon the witness placed marks on Exhibit 1 after which witness resumed stand)

(Whereupon a picture was marked as People's Exhibit 5, for identification, and the Exhibit is shown to witness)

(Witness continuing)

258 People's Exhibit 5, for identification, truly and correctly shows the southwest corner of the premises at

3101 West Harrison as I there saw them on the early morning hours of December 5, 1953, after the locks had been removed. At noon, on December 5th, when I was there, I picked up a pillow slip.

(People's Exhibit 6, for identification, was marked and shown to the witness)

(Witness continuing)

That looks like the pillow slip that I picked up. I turned it over to Sergeant Grady of the Arson Squad
259 of the Police Department. He was there present at that time. I received the alarm for this fire at approximately 2:09 A.M. I arrived at the scene of the fire possibly three minutes later.

(People's Exhibit 5, for identification, was of-
260 fered and received in evidence without objection)

(People's Exhibit 5, in evidence, was shown to the jury without objection)

(Witness continuing)

People's Exhibit 5 is a picture of a door at the southwest corner of the premises as I there saw it after the locks had been chopped off.

Cross Examination by Mr. O'Donnell.

I said I went back to the premises later the same day. That was approximately eleven o'clock in the morning.

Q. Will you tell the court and jury how many people were in the premises between 2 A.M. in the morning and 11 A.M. in the morning?

A. No, I couldn't.

Q. As a matter of fact, a small army walked through that place, didn't they?

A. I wouldn't know that.

Mr. Papanek: Object to the characterization of the question, to the form.

The Court: Objection will be sustained.

(Witness continuing)

I am not an arson investigator. I have never attended an arson school. I would not say that I have never studied the relative combustibility of various
262 materials. I have never studied the primary and secondary causes of fires. I did not investigate the gas heater that is located in this building. I did not notice at that time that there was a gas pipe broken on that gas heater. The gas that that heater uses is explosive. It is lighter than air. It would fill the room from the top down. And if it were to reach a flash point close to the floor, it would explode with tremen-
263 dous force. I couldn't determine whether or not if were to reach a flash point, say five or six feet above the floor, it would explode with less force. There was not a kitchen range in the premises to my knowledge. I did not look to see if there was a kitchen range in the premises. I did not find any candles on the premises.

Q. Are they one of the usual arsonist's tools?

Mr. Papanek: Object.

The Court: Objection sustained.

(Witness continuing)

I did not determine the cause of the fire. It wasn't my job to determine the cause of the fire. I stated that there was a charred section around the Albany
264 Street door and I observed that. I did not investigate the premises. When I went back it was eleven o'clock in the morning. The condition of the inner

Albany Street door was that it was burned, charred. I didn't notice the condition of the outside surface of the inner Albany Street door, I did not walk in by that way when I came there at eleven o'clock.
265 The door was open and that door opens into the premises. The door jamb around the door was completely charred. The portion that you could see of the inside of the inner Albany door was charred.

Redirect Examination by Mr. McGovern.

I was asked by counsel whether if gas filled a room from the top down there would be an explosion.

Q. Now, if gas filled the store premises at 3101 West Harrison Street, as you have depicted on the plat, from the roof down to the floor and it was ignited what would have happened to the premises?

Mr. Doherty: Objected to. Calls for a conclusion.

The Court: The objection is sustained.

(Whereupon, discussion was had between court and counsel outside the hearing of the jury and court reporter, after which the following pro-
267 ceedings were had in the presence and hearing of the jury, to wit:)

The Court: Objection sustained.

Mr. McGovern: Lieutenant, if gas filled a room as counsel has stated and it filled it from the roof down to the floor, and it was a room similar to any of the rooms on the plat of 3101 West Harrison Street, would you have an opinion as to what would have happened to that room?

Mr. Doherty: Object to the form of the question.

The Court: He may answer.

The Witness: You would have a terrific explosion.

Q. And when you say, "a terrific explosion", what would happen to the particular property?

Mr. Doherty: Object.

The Court: Sustained.

Q. Do you have an opinion as to the nature of the damage that would occur as a result of that explosion?

Mr. Doherty: Same objection.

The Court: The objection is sustained.

Mr. McGovern: When you say, "terrific explosion", Lt. Murphy, what do you mean by that, sir?

268 Mr. Doherty: Same objection, if the court please. There has been three objections sustained here, if the court please. I would like the court to admonish counsel not to go through this line of questioning.

The Court: He may answer as to what he means by "terrific".

The Witness: In my experience of it I would say the building would be demolished.

Recross Examination by Mr. O'Donnell.

I couldn't give you the exact position of the gas heater in relation to the premises. I didn't pay that much attention to it. It was between—as far as I can remember—between the store and bedroom section, in the ceiling. I couldn't say what portion of the premises for sure. I don't recall whether it was over the partition or on either side of the partition, but it was suspended from the ceiling.

(Witness is asked to step down from the witness stand and take pointer and approach plat and to locate the position of the gas heater,
269 whereupon the witness stepped down.)

Mr. Papanek: Object to the form of the inquiry.

The Court: He may answer.

The Witness: From my recollection, as I say, I don't recall where it was, but from the drawing, as described, there is a gas heater. (indicating)

Mr. Papanek: Indicating just north of the partition separating the living quarters from the store section for the purpose of the record.

(Witness resumed witness stand)

Mr. O'Donnell: If you know, Lieutenant, if gas was to fill a room from the ceiling down and it
270 reached a flash point five or six feet, or four feet from the floor, would it explode with less force?

Mr. Papanek: Object as having been answered.

The Court: He may answer.

The Witness: The force I couldn't determine.

Mr. O'Donnell: Would it be less force?

A. That I couldn't determine.

(Witness excused)

(Whereupon a five minute recess was had after which the following proceedings were had in the
271 presence and hearing of the jury, to wit:)

WILLIAM CORBOY, called as a witness on behalf of People, sworn, was examined, testified as follows:

Direct Examination by Mr. McGovern.

My name is William Corboy. I live at 4028 West Polk Street. I am a fireman first class, ambulance service, Chicago. I am assigned to 2447 West Warren Boulevard, Engine 24 quarters. I was so assigned on December 5, 1953. On that date, in the early morn-
272 ing hours, I went to a fire at Harrison and Albany Streets. I entered the premises there when I was

ordered to remove a body. I went in the Albany Street side.

(Whereupon witness stepped down from witness stand)

I entered the premises at the Albany Street door right here. (indicating) Wait a minute, here, right here. (indicating). When we entered we carried our stretcher along the foot of the bed on the west side
273 of the bed. There was the body of a woman. Her head was facing to the east and her legs to the west right here. (indicating) I reached up on the bed and took the top parts of the body. My partner was in the center and Lt. Murphy assisted us in lifting the body off the bed and setting it on the stretcher. We took the stretcher back to the ambulance parked at the southeast corner of Albany and Harrison.

(Witness resumes stand)

The body was that of a female. We proceeded to the County Hospital. At the County Hospital I went and got hold of a doctor. A doctor came out to the ambulance and inspected the body and pronounced
274 the victim dead and he ordered us to take it to the County Morgue. We did that. We left it at the morgue, on a receiving table.

(Witness excused)

275 MARSHALL LANAHAN called as witness on behalf of People, sworn, was examined and testified as follows:

Direct Examination by Mr. McGovern.

My name is Marshall Lanahan. I live at 5402 Wright Street. I am a city fireman assigned to Fire Ambulance #10. I was so assigned on December 5,

1953. I went to a fire at Harrison and Albany Streets
276 on that date. We were ordered to remove bodies from the ruins. I later entered the premises. We brought our stretcher in and placed it against the wall and were handed two bodies, placed them on a stretcher, took them out, put them in the ambulance and proceeded to the County Hospital. One of them had long hair. The larger one had longer hair so I figured it was a girl. I couldn't determine the sex of the other one. After they were pronounced dead at the County Hospital, we took them to the
277 County Morgue of the City of Chicago, and placed them in the tray.

(Witness excused)

ROBERT ENWELL called as witness on behalf of people, sworn, was examined and testified as follows:

Direct Examination by Mr. McGovern.

My name is Robert Enwell. I live at 2621 West Logan Boulevard. I am a police officer, Chicago, as-
278 signed to the 23rd District. On December 5, 1953, I was assigned to squadrol 276, 23rd District. I went to a fire at Harrison and Albany Streets. I was ordered to the Albany entrance of the building at Albany and Harrison. I took a stretcher out of the squadrol and brought it to the door, the Albany entrance. The firemen put the body of a boy into our stretcher and we were ordered to take it to the County Morgue. We did that. We also took it to the County Hospital where the body was pronounced dead, and then we took it back to the County Morgue. We left it there.

(Witness excused)

WILLIAM GIBBONS called as a witness on behalf of People, sworn, examined and testified as follows:

Direct Examination by Mr. Papanek.

My name is William J. Gibbons. I live at 5641 South Loomis, Chicago. I am a lieutenant, Chicago Police Department, assigned to the 23rd District, Marquette. I was so assigned on the 4th and 5th of December 1953. I was acting captain in command of the Marquette District. At approximately 2:30 A.M. on the morning of December 5, 1953, I was at my home. I received a phone call at about that hour. I immediately placed a detail at a fire located at 3101 West Harrison Street, a 24 hour detail of uniformed policemen, around the clock. That is termed a security detail. I caused that detail to be placed there at that time, right at the time I was notified myself. It stayed on around the clock at those premises until December 12th at 4 P.M. They were uniform police. I went to the southwest corner of Harison and Albany Streets on December 5, 1953, at approximately 9 A.M. When I arrived there at 9 A.M., my detail was on duty. That property is located in the City of Chicago, County of Cook, State of Illinois. I think that property was boarded up two days before the 12th. When I was there on the 5th of December, 1953, I noticed the window area and the front door area of that building. The complete front of the building facing Harrison Street was covered with tarpaulin, furnished by the Fire Department. All the glass, the front, was covered and the entrance into the store proper, was covered with the same tarpaulin.

Cross Examination by Mr. O'Donnell.

I stated that I went to the premises at 9 A.M. on December 5th, That was some seven hours after the fire occurred. When I arrived at 9 A.M. the Albany Street door was open. I did not go into the premises at that time at all. I was not familiar
284 with the premises. I don't know of my own knowledge that between 2 A.M. and 9 A.M. there was a police detail there. I know that I ordered a detail there. I never questioned Anthony Riccobene relative to this fire.

Redirect Examination by Mr. Papanek.

Q. Lt. Gibbons, you have, however, records as to the officers who were on detail starting at 2:30 A.M. on the morning of December 5th and from there on, is that right?

A. I have those records.

Mr. Doherty: Objected to as being improper redirect examination.

The Court: He may answer.

The Witness: I have a complete record of each
285 individual officer and the hours in which they were assigned to said building.

(Witness continuing)

The record discloses that there was a police officer there stationed from 2:30 A.M. and on through until 4 P.M. on December 12th, 1953.

(Last answer objected to as not being the best evidence and sustained by court.)

Recross Examination by Mr. O'Donnell.

I have an accurate and complete record of all the people that were questioned at the Marquette Police Station relative to the fire that occurred at 3101 West Harrison. I haven't got them personally. They are in the file. They are available. Officer Roy Triner
286 and Jacob Lefler have the files.

(Witness excused)

(Whereupon said cause was recessed to 2 o'clock the same day, Friday, January 7, 1955, afternoon session, 2 o'clock P.M. Parties present: Same)

287 (Whereupon the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

288 Mr. Doherty states that he would like to recall Captain Conte for cross examination.

Mr. Papanek states that he will be glad to cooperate and get the witness there.

289 (Whereupon a discussion was had between court and counsel after which the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

Mr. Doherty: Your Honor, as I understand it, your Honor will permit us to lay a proper foundation for impeachment in reference to the point of the charring on the outside of the Albany Street door;
290 that is, the inner door?

The Court: That's correct.

The Court: You are asking these questions while he is still under cross examination, is that correct?

Mr. Doherty: Yes.

Mr. Doherty: We want to go into the question of whether this was a flash fire, to which we expect and

we know, we have reason to believe he will answer, no; at which time we intend to ask him, "have you ever made a previous contradictory statement to the effect that this was, in fact, a flash fire" to which he will undoubtedly reply he does not recall. Then we wish to impeach him from the transcript of the case known as the People of the State of Illinois versus Vincent Ciucci, 53-2415, during cross-examination of Captain Conte by Attorney Thaddeus Toudor, and also from the testimony adduced at the coroner's inquest on December 7th, 1953, at which time, and in
291 reply to questions propounded by Assistant State's Attorney Bloch, Captain Conte replied that this fire could not have been burning ten or fifteen minutes, that it must have been much less in point of time, because in his opinion it was a flash fire.

Now, will your Honor permit us to go into that phase?

The Court: For the purpose of stating it, the court will not permit you to do so and this statement made by you may be received as an offer of proof as to what you intend doing under the circumstances.

(Whereupon a discussion was had between court and counsel off the record, after which the following proceedings were had in chambers, outside the presence and hearing of the jury, to wit:)

Mr. Doherty: I take it then, that your Honor will not permit that.

The Court: No.

(Whereupon the following proceedings were had
292 in the presence and hearing of the jury, to wit:)

EDWARD NEVILLE called as witness on behalf of People, sworn, examined and testified as follows:

Direct Examination by Mr. McGovern.

My name is Edward Neville. I live at 3000 North Mason, Chicago. I am a police officer, Chicago, assigned to the Arson Detail of the Detective Bureau. On the 5th day of December, 1953, I went to a store
293 at Harrison and Albany Streets, Chicago. I was there sometime around noon. I met Chief Collins of the Fire Department and Lt. Murphy of the Fire Department and Frank Grady of the Arson Detail, a police officer. We entered the premises and the kitchen. We looked all over the kitchen.

294 (Witness steps down from witness stand and up to plat)

We walked around the kitchen, by this wardrobe here. (indicating) I looked into that wardrobe. This wardrobe was partitioned in the center and on the right hand side there was a .22 caliber rifle, which was in two parts, stock and barrel.

(Witness resumed witness stand)

When I saw this rifle in the wardrobe, it was disassembled. I did not touch it or move it in any way. Also, we had entered the rear room, there was two rooms there partitioned off by wallboard and in the
295 rear room there was a pile of debris, and while making a search of this debris, we found two parts of what appeared to be a sheet, appeared to be blood on it and Lt. Murphy of the Fire Department handed us this pillow slip with the blood stains on it. They were put into a paper bag by Officer Grady.

(Witness is shown Peoples Exhibit 6, for identification)

(Witness continuing)

I recognize this exhibit. That is the pillow slip handed to us by Lt. Murphy of the Fire Department. I recognize it because this pillow slip was initialed by Frank Grady. Out on the sidewalk where we removed it from the bag we had put it in, it was initialed by
296 Frank Grady. It is in substatially the same condition now as when we found it, except this hole was not here. (indicating)

(Peoples Exhibits 7 and 8 were marked for indentification)

(Witness is shown Peoples Exhibit 7, for identification)

(Witness continuing)

297 That is part of the sheet taken from the debris. It was also initialed, Frank Grady's initials. It is in substantially the same condition as when I received it except that it was wet and these holes weren't there, either.

(Witness is shown Exhibit 8 for identification)

It is also a portion of the bedsheet that was recovered by me and Officer Grady on December 5th, 1953. It is in substantially the same condition as when we received it except I don't remember these
298 holes in here. The initials of Frank Grady were placed upon this Exhibit at the time he placed his initials on the pillow slip and the other bed sheet.

(Group Exhibit, Peoples Exhibit 9 for identification, consisting of a .22 rifle, dismantled into two parts, barrel and stock, was marked for identification)

(Witness continuing)

Peoples Group Exhibit 9, the barrel and the stock portion of the rifle look like the rifle I saw in the
299 wardrobe at 3101 West Harrison Street on December 5, 1953. That Exhibit was turned over to the Crime Laboratory.

Cross Examination by Mr. Doherty.

I arrived there about 12:30 P.M. on December 5th. I went to the Albany Avenue door. That door was open as I walked in.

Q. Was it badly charred on the outside?

A. No, as I remember that door, it was metal on the outside.

Q. Yes?

300 A. I wouldn't say the metal was charred, no.

Q. What did you observe about the metal?

A. Probably the heat caused corrosion or charring.

Q. Extreme blistering?

A. Well, I don't know what you would call extreme blistering.

Q. Was it blistered?

A. It was marked up, yes.

Q. Did that indicate to you that it had been hit by fire?

A. I would say yes.

Q. Was there a screen door there?

A. Yes.

Q. Was the screen door physically damaged in any way?

A. As I remember that door, it was broken a little.

Q. Well, how was it broken?

A. I don't know how.

Q. Will you describe the break on the screen door?

A. It seemed to be broken, the part towards the hinge broken.

Q. Broken right off, is that right?

A. No, I would not say that. Part of it was hanging there.

301 Was it serviceable?

Mr. Papanek: Object to the term.

The Court: The objection is sustained.

Mr. Doherty: Could the door be opened and closed?

A. I believe it could, yes.

Q. Did it have a lock on it?

A. The screen door?

Q. Yes.

A. I don't remember if it had a lock.

Q. Did it have a hasp on it?

(Witness continuing)

302 I don't remember if it had any means of locking or not. I don't remember the inner door, the big door, being bent. There was fire damage to the corner of the door and there was a clasp, I imagine in the sliding bolt action, that had been broken. I observed the door jamb. It was badly charred. I did observe the inside surface of the Albany Street inner door. That also 303 had a metal covering. I had been charred, smoke, heat and fire. I would say the outside was not charred as badly. I went into the toilet which is located right in the kitchen area. I did not observe a window in that toilet. I walked into the kitchen room there and was there a minute or two. I saw no damage outside

of the water poured on by the firemen. I don't recall any fire damage, no. I don't recall a window.

Q. Would it refresh your recollection to look at the chart, Officer?

A. Well, I would probably find there was one (a window), but I still wouldn't remember it.

304 (Witness stepped down from witness stand)

Q. Does that refresh your recollection that there was a window?

A. No, I still don't remember the window. I see it there, but I don't recall anything about it. I don't recall that it had bars on it.

(Objection by State overruled)

(Witness continuing)

I don't recall anything at all, about, if there was a window or how it was.

Q. Did you notice any broken glass outside the bathroom?

A. Well, in the bathroom, there was clothes and different containers and washing utilities. I don't know if there was broken glass or not, but it was in a general messed up condition. I would say there was debris around.

Q. How deep was it?

A. In the bathroom?

305 Well, all over?

Mr. Papanek: Object to the form of the inquiry.

The Court: Objection is sustained.

(Witness continuing)

This wardrobe I found was scorched on the outside, up above I would say it was scorched from the heat.

Q. What about below?
A. No, I would say no damage below.
Q. Most of the damage was on the upper portion?
A. I believe that's right, yes.

(Witness continuing)

I did not open the doors on the wardrobe. The doors were open. I would say maybe twelve inches, fourteen inches. There was clothing inside. There was
306 no damage inside at all. I did not handle the rifle. I did not find a shotgun on the premises. I did not look for one. I noticed the gas space heater located on the north partition. I would say there was no fire there. I have been with the Arson Detail three years. I did not examine the gas space heater for a pilot light. We looked at the heater, the gas heater, to see if we could detect the odor of gas and we detected none. We looked to see if there had been any fire damage in
307 the vicinity of it and there was none. I didn't examine it minutely to see if there was a pilot light. I didn't try to light it. I don't recall a broken pipe on it, no. There was a gas stove in the premises. It would be on the west wall of the kitchen. This .22 rifle was dismantled at the time.

(Witness excused)

JAMES McMAHON called as witness on behalf of People, sworn, was examined and testified as follows:

Direct Examination by Mr. Papanek.

My name is James McMahon. I live at 6309 North Oak Park Avenue. I am a lieutenant on the Chicago

Police Department in charge of the Homicide Section of the Chicago Police Department. I have been with the Homicide Section since September of 1946. On December 5, 1953, about 9 P.M. I was in Cook County Hospital in Ward 24. Coroner McCarron, the Coroner
309 of Cook County, was with me. Also, the Chief Deputy, the Chief of Detectives, Mr. Bloch, the Assistant State's Attorney, Mr. Gutknecht, Mr. Downs of the Corporation Counsel's office. I saw Vincent Ciucci in room 215, Ward 24. The room that I saw Vincent Ciucci in at that time and place was a ward consisting of I believe six beds, and around his bed there was a cloth screen affording him privacy from the other patients.

Mr. Doherty: Objected to as not responsive.

310 (Question read by reporter)

The Court: It may stand.

(The witness continuing)

I was on the inside of the screen with Coroner McCarron standing along side the bed.

Q. What was the conversation?

A. I had a conversation with Vincent Ciucci at that time. I asked him, " What happened to you?". And he stated to me that he was awakened about 2:15 A. M. by heat and smoke.

(Objection by Mr. Doherty that the answer was not responsive; question withdrawn.)

311 Q. What was the conversation, with reference to a gun?

A. I asked the defendant, Vincent Ciucci, if he had a gun. He said "no." I asked the defendant, Vincent Ciucci, if he ever owned a gun. He said, "no".

(Witness continuing)

312 Earl Downs of the Corporation Counsel's office was there in back of the screen close enough that I heard his voice.

Q. What was said by Earl Downs in your presence and in the presence of Coroner McCarron and this defendant?

A. Earl Downs stated that Frank Grady told them there was a gun in the wardrobe.

Mr. Doherty: Objected to.

The Court: What is the basis?

(Whereupon following proceedings were had in chambers, outside the presence and hearing of of the jury, to wit:)

Mr. Doherty: We object to anything that Frank Grady told him. Let them produce Frank Grady. That
313 is purely hearsay.

Mr. McGovern: Judge, this a conversation and the officer has testified that he was there present at the bedside of the defendant. He is testifying as to having a conversation with the defendant and he is also testifying as to what Corporation Counsel Earl Downs said in the presence of the defendant.

The Court: The objection is overruled.

(Whereupon the following proceedings were had in the presence and hearing of the jury, to wit:)

The Court: The objection is overruled. He may answer.

The Witness: I overheard a voice that I knew to be Earl Downs, say Frank Grady told him there was a
314 rifle in the wardrobe in the kitchen in the Ciucci home.

(Witness continuing)

Immediately thereafter, together with my partner, Officer Robert Noonan and Joseph Tigerman of the Coroner's office, we left the hospital and we notified the 23rd District that we were going to the Ciucci home at 3101 West Harrison Street and we drove over to the address.

Q. And what happened when you arrived there?

A. On our arrival there, and after we alighted from the car, I observed a uniformed police officer.

Mr. Doherty: Object to that.

The Court: What is the basis of your objection?

Mr. Doherty: That is not responsive.

The Court: Read the question.

(Question read by reporter)

The Court: He may answer.

The Witness: On my arrival there, I observed a
315 uniformed police officer standing in front of the building. I identified myself to him as a police officer and my partner did likewise together with Joseph Tigerman of the Coroner's office. We had a portable search light we had taken from the car and we removed, or partially removed, the tarpaulin that was covering the entrance to the building and entered through a glass that was broken in the front door. We went to the kitchen in the rear of the building, to a wardrobe in the kitchen. We opened the doors of this wardrobe and directed the rays of the search light into the wardrobe and saw a butt of a rifle resting on the floor of this wardrobe.

316 (Witness steps down from stand)

(Witness indicates on the plat a wardrobe in the southeast corner of the kitchen on the east

wall of the partition dividing the kitchen and the bedroom)

(Witness resumes witness stand)

(Witness continuing)

The gun I observed there was in more than one piece. I first removed the butt of the gun and then removed the barrel of the gun. I have seen People's
317 Group Exhibit 9, for indentification, before. I saw it in the wardrobe in the home of Vincent Ciucci, 3101 West Harrison Street. I recognized those two pieces, Peoples Exhibit 9, for identification, because after removing both of these from the wardrobe I initialed them. I initialed them on this particular part of it, I initialed it "J. M. C. M." (indicating). And on the
318 barrel portion, in the mechanism, the same, "J. M. C. M." I scratched that into the metal. I took People's Exhibit 9, wrapped it in a towel found in the kitchen and took it to the County Hospital and turned it over to Lt. Gibbons, the Acting Captain of the 23rd District. This was still the same night of December 5th, 1953. That gun is in substantially the same condition with the stock and the barrel as I have seen it here.

319 (Whereupon a short recess was had after which the following proceedings were had within the presence and hearing of the jury, to wit:)

Cross Examination by Mr. Doherty.

I testified that when I was talking to Vincent Ciucci there in room 215, I asked him if he ever had a gun. I was present in the courtroom of his Honor, Judge Dempsey, on Tuesday, March 9, 1954, and at that time I raised my hand before God and swore to

tell the truth, the whole truth and nothing but the truth.

Mr. Papanek: Object, if the court please, to the form of the inquiry.

(Whereupon the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

320 Mr. McGovern: The basis of our objection is this; in counsel's question he is asking this witness about telling the truth and the whole truth and he is accentuating it by speaking louder on that particular word. We submit it is sufficient to ask the witness if he was under oath at that time or if he raised his hand and took an oath to tell the truth, but we submit to the court that the form of counsel's question is bad.

The Court: The court will sustain the objection as to the point raised by the State's Attorney.

Mr. Doherty: Judge, that is the very basis of my impeachment.

The Court: I think your preliminary question is to find out whether or not the witness was under oath, and while I know of no prescribed method of ascertaining it, I think the remarks by the State's Attorney, of the accentuation of the part of the question, when it is merely a preliminary question for the purpose of laying a foundation to see if he was under
321 oath, is well taken.

What else do you wish to say?

Mr. Doherty: I am sure that he at that time told the whole truth. He never at that time said that he told him—or asked him, I should say—"Do you have a gun? That is not what he asked him at all. The word was "own".

The Court: He may ask him whether or not he was under oath at that time, if he raised his hand to tell the truth.

Mr. Doherty: Now, how does the oath read, your Honor?

The Court: If you endeavor to question him as to what oath he took at that time, as to the exact verbiage?

Mr. Doherty: That's correct.

The Court: I think that is unnecessary. If the witness at that time knew that he was under oath, he may say so.

Mr. Doherty: But your Honor, this is by way of showing—

The Court: As to what took place at the time this man was sworn in Judge Dempsey's courtroom? You are only trying to determine whether or not he was
322 under oath and he knew he was under oath at the time he was testifying.

Mr. Doherty: The basis of this question, this preliminary question is to show that he is now testifying to something that he did not testify to then, although he was sworn to tell the whole truth.

Mr. McGovern: That isn't part of our objection. All we are objecting to is the form of the question. Counsel knows if he wants an impeaching question, all he has to do is ask him an impeaching question. I don't think that matter is before the Court at this time.

The Court: I will hear you further, but the Court is sustaining the objection as to how you put the interrogation, point one, as to whether or not he was under oath at the time he testified before Judge Dempsey.

Mr. Doherty: I want to ask him, "Did you at that time tell the whole truth?"

The Court: You may ask him that. There will be no finding to these other remarks made in front of the jury, as to whether the Court did or did not sustain the objection.

323 (Whereupon the following proceedings were had within the presence and hearing of the jury, to wit:)

The Court: You may ascertain whether or not the witness understood that he was under oath at the time he testified in Judge Dempsey's courtroom on the date he testified.

Mr. Doherty: Q. At that time, you were sworn to tell the whole truth, is that right?

A. That's right, sir.

Q. At that time, did you tell the whole truth?

A. To the best of my memory, yes, sir.

Now, at that time, were you asked this question by Mr. Papanek. Page 439.

"Q. Will you tell the ladies and gentlemen of the jury, and the Court, what that conversation was, Sergeant?"

Then there was an objection and the objection was withdrawn, and then your answer:

"A. In the presence of Coroner McCarron I asked the defendant what happened at the fire, and he told me that he wakened at about 2:15 a.m. due to intense heat and smoke, and the next thing he remembers he was in Ward 24 of the Cook
324 County Hospital. I said to him, 'Would it surprise you if I tell you your wife and children had been shot?' And he said, 'Yes, it would.' I then asked him, 'Do you own a gun?' His answer was, 'No.' I said, 'Did you ever own a gun?' He said, 'No.'

And at about that time I heard Mr. Downey, of the Corporation Counsel's Office, who was in the room, but in back of this shade around this bed, say—"

Then there was an objection.

Was that your answer at that time?

Mr. Papanek: I submit that I was limited by the question to this witness, and when the witness began to relate the whole conversation, counsel objected. For that reason, I am objecting to this question now being put to the witness, if the Court please.

Mr. Doherty: I am objecting to the speech by the State's Attorney.

The Court: Let's step into chambers.

(Whereupon the following proceedings were had in Chambers, outside the presence and hearing of the jury, to wit:)

The Court: Before we get into that. First read the last question.

325 (Question read by the reporter.)

Mr. Papanek: We are objecting to this entire relationship of a statement, and I asked the question of this witness to begin with.

Mr. Doherty: In which trial?

Mr. Papanek: Now, today. "Did you have a conversation with him about a gun?" The witness started to relate the conversation that he had with him. At that time, he, Mr. Doherty, objected, properly so, as not responsive, so now, the witness being directed, he must answer specifically that question, "Did you have a conversation with him about a gun?" The man related "Yes", and he said, "I asked him this and he answered and I asked him this and he answered". Two questions, two answers.

Now, I am objecting to this repetition of the entire conversation now by Mr. Doherty. If he is going to impeach him, let him lay a foundation by a specific question and a specific answer.

The Court: Let me answer your question. It is the Court's recollection that on your direct examination of this witness, the witness was permitted to tell what he heard Mr. Earl Downs of the Corporation Counsel's Office say.

326 Mr. Papanek: That was my next question, Judge, that's correct, but I asked him, "Did you have a conversation about a gun?" "Yes." Question, answer; question, answer. Did he hear anyone else outside of that group say something? "Yes."

Mr. Doherty: Will you—

Mr. Papanek: "Yes, Earl Downs said so and so".

Mr. Doherty: I disagree with that because in your conversation, when you asked him to relate the conversation with Earl Downs, you made Ciucci present. It is right in the record.

Mr. Papanek: Of course he was present.

Mr. Doherty: And you are trying to say he heard this.

Mr. O'Donnell: As far as the objection is concerned, had we just taken the question, "Do you own a gun?" we would have been accused of taking something out of the context of it. Just like if we asked him these two questions: "Do you own a gun?" "No." "Did you ever own a gun?" "No."

You read in the beginning in order to be fair, didn't you?

Mr. Doherty: Certainly.

The Court: Just a moment. This is off the record.

327 (Whereupon, a discussion was had between Court and Counsel off the record, after which the following proceedings were had outside the presence and hearing of the jury, to wit:)

The Court: Let the record show that the Court is making no ruling at this time as to the objection made by the State.

(Whereupon, the following proceedings were had in the presence and hearing of the jury, to wit:)

The Court: You may proceed.

Mr. Doherty: Q. Was that question asked of you and did you make that answer?

A. What question, sir, please?

The Court: Were those questions asked of you?

Mr. Papanek: Your Honor, I think if counsel will reframe the question, I think that will straighten the thing out.

The Court: All right, if you will, Mr. Doherty.

Mr. Doherty: Q. Was this question asked of you and did you make this answer:

328 (Questions and answers from the previous trial were reread to the witness as appear above)

Q. Now were you asked that question and did you make that answer?

A. Yes sir, I did.

329 (Discussion between Court and Counsel)

330 (Witness excused.)

330 IRWIN BLOCH called as witness on behalf of People, sworn, was examined and testified as follows:

Direct Examination by Mr. Papanek.

My name is Irwin Bloch. I live at 5051 West Congress,
331 Chicago. I am a lawyer. I am the First Assistant State's Attorney of Cook County. I was First Assistant State's Attorney of Cook County in the month of December and on December 5th, 1953. On the night of December 5, 1953, about 11:15 P.M. I was in the County Hospital, in ward 24, in room 215 of that ward. I saw and asked questions of the defendant, Vincent Ciucci, Sr. The defendant, Vincent Ciucci, Court Reporter, Louis Matsuoka, State's Attorney Gutknecht, Coroner McCarron, Captain Golden of the Homicide Detail and Lt. Mandernick of the 23rd District, Lt. Gibbons of the 23rd District, Leo Poch of the State's
332 Attorney's office, Dr. Marks, Officer Charles Doherty attached to the State's Attorney's office and I were all present. I don't recall who else might have been there. At the time I was asking questions of the defendant, he made answers to those questions and Louis Matsuoka, the shorthand reporter, was writing in his shorthand notebook. State's Attorney Gutknecht and Coroner McCarron also asked questions of the defendant. Following that interrogation I directed one Assistant State's Attorney, Robert Smith, to take a document over to Bridewell Hospital for the defendant to read. That was on the morning of Monday, the 7th of December, 1953.

Cross Exammination by Mr. O'Donnell.

I assumed the duties of First Assistant State's Attorney of Cook County on December 5th, 1953. I am the first chief prosecutor of this county.

Q. Was this the first case you handled as First Assistant State's Attorney of Cook County?

Mr. Papanek: Objected to as immaterial.

The Court: Sustained.

(Witness continuing)

When I took this statement at 11:15 P.M., all the
334 people I named were present. I imagine they totaled up to about ten in number, although I didn't count them. Three different people asked Vincent Ciucci questions at that time. Most of the people who were there represented Cook County of the City of Chicago.

335 Q. Was there anybody present representing Vincent Ciucci?

Mr. Papanek: Object to the form of inquiry.

The Court: The objection is sustained.

(Witness continuing)

I have never studied medicine. I am not a doctor.

Q. Do you know anything about the effects of carbon monoxide?

Mr. Papanek: Objection, your Honor.

Mr. O'Donnell: Carbon monoxide intoxication?

Mr. Papanek: Objection.

The Court: What is the basis of your objection?

Mr. Papanek: The first question asked of the witness was was he a doctor and he said, "no." It is surely now improper cross-examination of this witness.

The Court: The objection is sustained.

(Witness continuing)

I have noticed a bandage on Vincent Ciucci.

336 (Witness excused)

337 JAMES CONTE having been previously called as a witness on behalf of People, having been previously sworn, resumed the stand and further testified as follows:

Cross Examination by Mr. Doherty (continued).

I realize I am still under oath.

Mr. Doherty: Captain Conte, referring to the Albany Street door; was the outside of the Albany Street door badly charred?

A. I don't recall.

Q. Do you know of anything that might refresh your recollection?

A. No, I do not.

Q. You testified in the courtroom of his Honor, Judge Dempsey, in the early part of March, 1954, is that correct?

A. Yes, I did.

Q. Now, were you asked this question on page 320: "Q. What was the condition of the south door, the one you pointed out to the court?" This is preliminary, Captain. "A. This door (indicating)?" "Q. (Con-

338 tinuing) to the court and jury. A. This one (indicating). Q. Yes? A. This here door was burned, charred very badly on the outside, the part that would be on the outside of the building (indicating). The inside was clad with tin, a tin cover and there wasn't much fire that hit that. The door frame around the

door was charred pretty badly. (indicating)." Does that refresh your recollection, Captain?

A. I don't recall, I believe I said that. I am not sure.

339 (Witness excused)

(Whereupon a recess was taken after which the following proceedings were had in the presence and hearing of the jury, to wit:)

LOUIS MATSUOKA called as witness on behalf of the People, first sworn, examined and testified as follows:

Direct Examination by Mr. Papanek.

My name is Louis Matsuoka. I live at 1021 East 46th Street. I am a shorthand reporter. I have been a shorthand reporter about seven or eight years. I
340 studied shorthand in high school and junior college, two-and-a-half years here at Gregg College, two years at Columbia University. I use the Gregg system. I am employed as a shorthand reporter by the State's Attorney of Cook County and have been so employed since February 3rd, 1953. I was on duty at the Cook County Hospital on the night of December 5th, 1953, as a shorthand reporter from the State's Attorney's office. I was present on December 5th, 1953, about 11:15 P.M. when Vincent Ciucci was being questioned.
341 I heard Mr. Bloch ask questions of the defendant. At that time I was writing the questions down in my shorthand notebook in shorthand. Mr. Bloch asked the questions and the defendant made answers to those questions. As he made answers, I wrote the answers down in my notebook in shorthand. During the course of that interrogation, State's Attorney

Gutknecht and Coroner McCarron asked questions of the defendant. I recorded these. The defendant answered questions propounded by these two people.
342 Following the taking of this statement, I caused my notes to be transcribed into a typewritten document. That was done by a typist.

(Peoples Exhibit 10, a document, was marked for identification)
(Witness continuing)

I examined this document prior to taking the stand. I compared this document with my original shorthand notes which I made on the night of December 5th,
343 1953, at the Cook County Hospital. The typewritten portions of that document are a true and correct copy of the notes, my original notes which I made in shorthand at the Cook County Hospital. There are changes in longhand where portions of the typewritten parts of the statement are crossed out. Those matters are written in longhand. Those changes in longhand do not correspond to anything in my notes. The original word or words which have been stricken out with ink
344 and other words written in over, are original typewritten words that compare with my original notes and not the changes. It is a true and correct transcript of my notes in its original typewritten form and prior to any changes being made in ink.

Cross Examination by Mr. Doherty.

This statement was taken in ward 24, room 215 of the County Hospital on December 5, 1953, at 11:15 P.M. There were ten people present, the defendant and myself. There were three people questioning
345 Vincent Ciucci at that time.

Q. Most of the questions are repetitious, is that correct?

Mr. Papanek: Objection, if the court please.

The Court: The objection is sustained.

Mr. Doherty: Well, did the three people who were interrogating Vincent Ciucci represent the County of Cook?

M, Papanek: Objection.

Mr. Doherty: If you know?

Mr. Papanek: Object to the form of the inquiry.

The Court: The objection is sustained.

Mr. Doherty: Does your Honor sustain the objection. I added "if you know?"

The Court: Yes, the ruling will stand.

(Witness continuing)

I would say I was taking notes at an average speed. I started to take notes about 11:15 P.M. I would say
346 it took an hour and fifteen or twenty minutes to actually take the statement. I was about two or three feet from Vincent Ciucci. I did not observe the pupils of his eyes. I did not see any cuts on his person. He was not lying down. As I recall he was sitting up in
347 the middle of this hospital cart. He had a hospital gown on. I did not observe any bandages on him.

Q. Do you, sir, of your own knowledge, know that the inhalation of carbon monoxide smoke causes brain tissue destruction?

Mr. Papanek: Object.

The Court: The objection is sustained.

(Witness continuing)

I have never studied medicine. After I took the
348 statement, I accompanied Mr. Bloch to the Morgue.

I took my book but I did not take any notes. I was in the Morgue in the hallway for twenty or thirty minutes. There were caskets there. They were closed. Vincent Ciucci was there.

Q. How did he get there?

Mr. Papanek: Objected to as being beyond the scope of direct examination.

The Court: The objection is sustained.

Mr. Doherty: Q. Well, when you saw him there, sir, what position was he in?

Mr. Papanek: Same objection, if the court please.

The Court: This was gone into on direct examination?

Mr. Papanek: No.

349 The Court: The objection is sustained.

Mr. Doherty: Were any of the coffins opened subsequently?

(Whereupon the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

The Court: For the record, Mr. Papanek, is your objection to the present line of questioning as to what took place in the County Morgue based upon the fact that it was not brought out in direct examination?

Mr. Papanek: Outside the scope of direct examination.

The Court: The court will hear you as to that point, as to any of those questions.

Mr. Doherty: Yes, your Honor. We may or we may not enter a motion to suppress this statement. We are going into the physical condition of the defendant as he there saw him in the early morning

350 hours of whatever day it was.

The Court: I think you can go into the physical condition of the defendant, insofar as it was gone into on direct examination; that is, as to what took place at the time of the County Hospital conversation. If you wish to go into his physical condition after that time, for the purpose of a motion to suppress, I think it should be done in a different fashion.

This now is cross examination and you are beyond the scope of direct examination. The Court did not wish to cause you to ask questions and then have an objection raised and the objection sustained as to each one. That is why the Court suggested that we go into chambers and inquire as to its purpose.

The Court will sustain the objection as to any questions that are beyond the scope of direct examination and suggests to you at this point, that you not continue asking questions as to what took place at the County Morgue because it is beyond the scope of direct
351 examination. If you wish to make proof, you may do so at this time.

(Whereupon a discussion between court and counsel was had off the record, after which the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

(Mr. Papanek states that there is no basis for a motion to suppress the statement, that it is not a confession, that it is purely an exculpatory statement.)

352 (Colloquy between court and counsel)

(Whereupon a discussion was had between court and counsel, off the record, after which the following proceedings were had in the courtroom, within the presence and hearing of the jury, to wit:)

353 (The witness continuing)

I never read my notes back to Vincent Ciucci. No one else in my presence ever read my notes back to Vincent Ciucci. I did not type the statement. I read my notes into a recording machine. I was not present when Vincent Ciucci signed this statement.

(Witness excused)

(Whereupon a discussion was had between court and counsel outside hearing of jury and court reporter, after which following proceedings were had within the presence and hearing of the jury,
354 to wit:)

ROBERT SMITH called as witness on behalf of People, sworn, was examined and testified as follows:

Direct Examination by Mr. Papanek.

My name is Robert J. Smith. I live at 6121 Newport Avenue, Chicago. I am an attorney at law. I am an Assistant State's Attorney for the County of Cook and I held that position on the morning of December 7th, 1953. On that morning, I talked to Erwin Bloch, First
355 Assistant State's Attorney. After having talked with him, I had occassion to take a document over to the Bridewell Hospital to see one Vincent Ciucci, Sr. I went there to see Vincent Ciucci, the defendant in this cause. I saw him on that date. At that time and place, I had in my possession this document which has been marked Peoples Exhibit 10, for identification. Prior to taking the stand, I examined this particular exhibit. When I was there talking to the defendant
356 and had this exhibit, Officer Ray Burton of the State's

Attorney's office was also present. At that place and at that time I introduced myself to Mr. Vincent Ciucci, told him I was an Assistant State's Attorney, and I also introduced Officer Ray Burton to him. I told him we had come over with a duplicate copy of the original of Peoples Exhibit 10 and I told him that it was a copy, a typewritten copy of the statement he had previously given and that my purpose in being there that particular day was to read it to him. He said he understood that. I then handed Vincent Ciucci the original copy and I retained the duplicate and I read to him aloud this entire document, and he looked at the original document, which he had in his hands and he followed it word for word, page for page. And I also stated to hi at that time that if there were any additions or corrections that he wished to make in the document to inform me as to the page number and what the particular addition or correction was. As
357 I read it to him, he interrupted me at various times and stated that he wished to make corrections or additions. As I recall, there were four. Those changes were actually made on People's Exhibit 10, for identification. I made the correction at his suggestion and direction and then Vincent Ciucci signed his name under the correction. I read the entire document to him and he retained one copy, the original copy as I
358 read it. After I had read it and after the additions and corrections had been made, I asked Vincent Ciucci then if the document was a true and correct typewritten copy of the statement that he had previously given to Mr. Bloch, all the questions that had been asked of him and all the answers he had given, and he stated, with the additions and corrections that he had made, that it was.

I then asked him if he would sign the document and he said he would. I then asked him, and in my presence he affixed his signature to the document and he initialed each and every page of both the original and the duplicate and I then further asked him to sign his complete name under each addition and correction which he did. People's Exhibit 10 is a true and correct
359 as it had been at the time I read it to him.

Cross Examination by Mr. Doherty.

The first time I saw Vincent Ciucci was in a hospital ward in the House of Correction. To the best of my recollection it was on the 7th day of December. He was seated upright in a hospital bed and he was wearing a typical bed jacket. I noticed the pupils of his eyes. I looked and talked with him. The pupils of his
360 eyes were pinpointed. I didn't notice anything unusual about the eyes of Vincent Ciucci. I don't know whether there was a doctor in the ward. There were people. I received permission from the people in the ward to talk with Mr. Ciucci. I did not know he was under medical care at that time. I asked permission upon entering the Bridewell, from the man at the desk, to see Mr. Vincent Ciucci and he informed me that I could see him. When I arrived in the hospital ward, I spoke with the person who was apparently in charge of the hospital ward and I asked him if I might see him and talk to him and he said, "certainly". I
361 did not at that time know the nature and extent of his injuries.

Q. Did you know at that time that Vincent Ciucci was under the influence of drugs or barbituates?

Mr. Papanek: Object.

The Court: He may answer.

The Witness: A. I don't know.

(Witness continuing)

I was acting upon the request of Mr. Bloch and his
362 secretary, Mr. Edward White. Officer Burton was with me. I read the statement aloud to Vincent Ciucci and he interrupted me from time to time to make corrections. Those handwritten corrections are all in my handwriting. With reference to the time it took to read the statement to Vincent Ciucci, I didn't look at my watch of the time of the actual reading of the statement. My best recollection would be from close to an hour—half an hour to an hour. I testified earlier that it took me half an hour or so. I introduced Officer Burton and I think he said hello, or words to that
363 effect. I did not hear any other conversation. I did not hear Vincent tell me he wouldn't sign anything or that he didn't know anything about it.

Q. Did you hear Officer Burton tell Vincent Ciucci that if he didn't sign the statement, they wouldn't release the bodies of his family for burial?

A. Officer Burton made no such statement.

(Witness continuing)

I was not present at the time the statement was taken from the defendant originally.

Q. Then, you have no idea what Vincent Ciucci's physical condition was at that time, do you?

Mr. Papanek: Object to the form of the inquiry.

The Court: He may answer.

The Witness: A. Well, yes, I do have an idea,
364 Mr. Doherty, I talked with him.

(Witness states that he was not present at the time the original statement was taken from defendant and witness is excused.)

(People's Group Exhibit 9, the rifle is offered in evidence.)

365 (The jury is retired for the day)

(Whereupon the bailiffs were sworn, after which the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

The Court: State your objection for the record, Mr. Doherty.

Mr. Doherty: May it please your Honor, the weapon that they are seeking to introduce into evidence has not been identified, nor connected in any way with the death of anybody; there is no showing where it came from.

366 There is no showing of any ballistics testimony in reference to it. Certainly, you would expect, before they would even begin to introduce a weapon, which they are going to claim by innuendo was the murder weapon that the very least they could do is have some ballistics testimony in reference to it and have the owner come in and testify. I think, your Honor, that it is premature at this time.

Mr. Papanek: We will do that, Judge, if there is any question about that phase of it.

(Further colloquy between court and counsel,
367 an offer of Exhibit is withdrawn.)

(Whereupon said cause was adjourned until Saturday, January 8, 1955, 10 o'clock A.M.)

10 o'clock A.M.
January 8, 1955.

Parties Present: Same as before.

(Whereupon the following proceedings were had within the presence and hearing of the jury, to wit:)

(Mr. McGovern offers in evidence People's Exhibit 10, for identification, being a statement of Vincent Ciucci)

(Court and counsel step into chambers for the objections)

(Whereupon the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

369 (Colloquy between court and counsel)

370 Mr. Doherty: We are objecting to this, your Honor, on the grounds that this is not a voluntary statement. I think that there is sufficient evidence in this record to show your Honor, that this man, at the time the statement was taken from him, was in a hospital and under medical care. There is no definite showing by the State that at that time, that he was, in fact, not suffering from the after effects of inhalation of smoke. The evidence shows that he was pulled out of the premises, which was consumed by fire and from which heavy smoke was emitting, as your Honor well knows from the evidence. The 371 smoke was pouring out of the half-moon window which was located in the store section. The store section is the section from which this person was extracted.

Now, therefore, we feel that it is incumbent upon the State to show by competent medical testimony that this man at that time was, in fact, not suffering from the after effects of carbon monoxide inhalation, from smoke inhalation. At this point, that has not been done. Therefore, we are objecting to this document being introduced in evidence.

371-372 Discussion between court and counsel as to whether or not counsel for defense has a true and correct copy of State's Exhibit 10, for identification. Counsel for defendant states they have statement from record of previous trial and do not wish additional time to examine State's Exhibit 10, for identification.)

The Court: All right, it shall be admitted at this 373 time subject to the objection you have previously mentioned.

(Mr. Doherty is given a copy of People's Exhibit 10)

Mr. Doherty: We are preserving an exception for the record to the admission of this.

The Court: Objection and exception.

Mr. Doherty: Yes, your Honor, and we are objecting to it being read to the jury.

(Whereupon the following proceedings were had within the presence and the hearing of the jury, to wit:)

The Court: Let the record show the Exhibit 10 for identification has been received in evidence as State's Exhibit 10.

374 (Whereupon People's Exhibit 10 for identification was received in evidence and is in words and figures as follows:)

375 Mr. McGovern: Your Honor, at this time, I ask permission to read the People's Exhibit #10 which is now in evidence, to the ladies and gentlemen of the jury.

The Court: You may do so.

Mr. McGovern: May the record show I am now handing a copy of People's Exhibit 10 to counsel for the defense.

The Court: It may.

Mr. McGovern: Ladies and gentlemen of the jury,
376 the People's Exhibit 10, which is now in evidence reads as follows:

376 STATEMENT

of

VINCENT CIUCCI,

taken in Room 215, Ward 24, Cook County Hospital, 135 West Harrison Street, Chicago, Cook County, Illinois, on Saturday, December 5, 1953, at 11:15 o'clock P.M.

Present:

Mr. John Gutnecht,
State's Attorney.
Mr. Irwin D. Bloch,
First Assistant State's Attorney.
Mr. Leo Poch,
Assistant State's Attorney.
Mr. Walter E. McCarron,
Coroner.
Captain Harry Ponzin,
Deputy Chief of Detectives.
Lieutenant John Golden,
Homicide Detail, D. B.
Acting Capt. William J. Gibbons,
23rd District.
Lieutenant M. J. Mondernach,
23rd District.
Officer Charles Doherty,
State's Attorney's Police.
James Marks, M.D.,
Intern.

377 Reported by L. Matsuoka, Book No. 5354.

Mr. Bloch: Q. What is your name?

A. Vincent.

Q. Your last name?

A. Ciucci.
Q. Where do you live?
A. 3101 West Harrison Street.
Q. Who do you live there with?
A. Wife and three children.
Q. What is your wife's name?
A. Anne.
Q. How old is she?
A. 27.
Q. And your children's names?
A. Vincent.
Q. How old is Vincent? Is that Vincent, Junior?
A. Well, Vincent, Frank is his middle name.
Q. How old is he?
A. Nine years old.
Q. What other children do you have?
A. Two girls.
Q. What are the girls' names?
A. Virginia.
Q. And how old is she?
A. She is seven.
Q. And the other girl's name and age?
A. Angie, she is four.
Q. Now, what sort of building do you live in? Will you describe it?
A. Well, grocery store in the front, a brick build-
378 ing. Grocery store in the front, three rooms more back, three rooms, two bedrooms and a kitchen and a washroom in back and do you want—
Q. What?
A. Do you want the one next door of mine?
Q. That includes all the premises that you occupy, is that right?

A. Yes, the premises I occupy, that's right.

Q. How many doors to your premises?

A. One, two, three, four doors.

Q. You could use four doors to go in and out of your house and store?

A. Well, no.

Q. I mean to your immediate premises, your store?

A. Well, the front, it would be called one door. It is a double door. There would be three doors.

Q. The front one is a double door?

A. Well, I mean, you know, it has got a storm door and you walk in and you have got a space. That is one.

Q. I should have said how many entrances are there?

A. Three.

Q. One in the front?

A. Yes.

379 And—

A. One on the side.

Q. What's the one in the front lead to?

A. It leads to Harrison and Albany Street.

Q. And does that lead into a store front?

A. No, that leads outside.

Q. I know—

A. Oh, yes.

Q. You walk into a grocery store?

A. That's right.

Q. And that door was locked, was it?

A. Yes, sir.

Q. Now, tell me where the next entrance is?

A. The next one is—there is one on Albany side, on Albany side, our bedroom.

Q. In other words, this store is right on the corner of Harrison and Albany?

A. That's right, Harrison and Albany.

Q. What corner is it, the northwest or—

A. Well, let's see now.

Q. What side of Harrison Street is it?

A. On the side where I am now, on the side where I am now.

Q. Are you on the north side of Harrison?

380 A. Southwest, southwest side.

Q. The southwest corner?

A. Southwest corner.

Q. Then there is one on Albany and that leads into what? What part of your house does that lead into?

A. Into our bedroom.

Q. Was that door locked?

A. To my knowledge, I couldn't say it was and I couldn't say it wasn't.

Q. Is it generally locked?

A. Yes, sometimes the kid would sneak out.

Q. After the kids go to bed, did you generally lock the door when you retired for the night?

A. Well, my wife—yes, I would say we would.

Q. To your knowledge, was the door locked last night?

A. I don't know, I don't know, I mean I can't actually say.

Q. As far as you know, it was though?

A. I couldn't say it was and I couldn't say it wasn't because I didn't look.

Q. You wouldn't have gone to sleep if you knew it was open?

381 A. My wife is the first one, she got to the bedroom.

Q. Was she the one—"

Pardon me.

"Was she the one generally who locked the door?

A. If I went to bed, if my wife worked, then I would check the door, you know what I mean.

Q. Then as far as you know when you went to bed last evening, it was locked, is that right?

A. Yes.

Q. Where was the other entrance?

A. By the bathroom door.

Q. What does that lead out into?

A. Empty lot in the back there.

Q. Would that be in the rear part of your house?

A. In the rear.

Q. And away from Albany on the opposite side?

A. Yes, that's right, on the opposite side of Albany.

Q. That would be the southwest corner of the premises itself?

A. Yes, not the corner but it would be the southwest, that's right, that side.

382 Q. Was that door locked when you went to sleep last night?

A. I couldn't swear if it was or it wasn't.

Q. Did you assume it was locked?

A. I guess it was.

Q. Generally, did you lock your doors?

A. Of course, I lock the doors.

Q. You told me a short while ago, didn't you, that there were two doors that could lead into your premises and that they were both locked, did you? Were they closed at that time?

A. I told you, I says they probably were locked. I don't know. I can't say that I looked at the door to

say that, I mean by looking at them to say they were locked. I can't say that.

Q. How many windows did you have on your premises?

A. Counting the store? You mean the whole premises? When speaking, you are speaking of the whole thing?

Q. The store and the rooms in the back.

A. In the back, there is one window in the bedroom of the baby's bedroom.

Q. Does that window have bars on the window?

A. Yes, bars.

Q. What other windows are there?

383 A. There is a skylight, not a skylight but a transom of our bedroom door on the top and there were—

Q. Yes.

A. And they got bars.

Q. Yes.

A. That has got the bar on it. And in the grocery store, you have two big windows and there is a transom on the top of the door.

Q. And do any of those windows in the grocery store have bars on them?

A. No, they haven't got bars on them.

Q. Do you keep any weapons in your home?

A. Yes.

Q. What kind of weapons do you have in your home?

A. I had a .22 and a BB gun.

Q. Are those the only weapons you had?

A. Yes.

Q. When you say a .22, will you describe it?

A. Wooden stock, wooden stock and then the barrel—

Q. Like a long rifle, is that right?

A. Yes.

Q. You are now looking at a rifle. Is that the gun you are talking about?

384 A. Yes, that's right, that is the gun, that is the gun.

Q. How do you recognize it?

A. What?

Q. How do you recognize it without touching it?

A. Oh, I see the chamber there for the—yes, not only that, but its cuts in there, what they call that—back there.

Q. How do you recognize it?

A. I recognize it from the barrel, the whole thing.

Q. You recognize the barrel and the condition that it is in, is that right?

A. Well, I recognize the gun like it is, because I know that goes into, right in there and you throw that back.

Q. You are pointing out various portions of the gun now?

A. I mean I recognize the whole—I recognize the barrel.

Q. All right. When did you get that gun?

A. I got that gun, well, let's see, today is Saturday; Friday evening.

Q. That is yesterday evening about what time?

A. Well, I'd say around five-thirty, quarter to

385 six.

Q. From whom did you get it?

A. From this Frank Caruso.

Q. Frank Caruso, is that right?

A. Yes.

Q. Where does he live?

A. He lives on the corner of Leavitt and Flournoy.

Q. On the corner?

A. Right on the corner, a big apartment building.

Q. Were you in his apartment yesterday when you got the gun?

A. Yes.

Q. What floor does he live in?

A. First I met him down in the basement, see. I met him in the basement first.

Q. How long have you known him?

A. Well, I'd say about nine years, ten years, eight years.

Q. Why did you borrow the gun yesterday?

A. Well, I was figuring going for rabbits.

Q. Was Frank going to go with you?

A. No. I just went over and asked him if he was doing anything tomorrow. He says he didn't know.

Q. What corner of Flournoy and Leavitt is that
386 that he lives on?

A. On this side on the corner, there are four corners, facing this way, it is on this side here, Flournoy and Leavitt, right on this side.

Q. Flournoy and—

A. This would be it.

Q. If this was Flournoy—

A. Yes.

Q. —and this is Leavitt—

A. Right.

Q. —and this is Flournoy, then Harrison would be over here.

A. He is on the Harrison side. It would be right here. This would be Harrison, and Leavitt, and Flournoy. He lived right on that corner.

Q. Well, Harrison is north of Flournoy?

A. Like this.

Q. This is Harrison and this is Flournoy.

A. And this is Flournoy, that corner right there.

Q. That would be the northeast corner of Flournoy and Leavitt, is that right?

A. Yes.

Q. And what did you talk with him about?

A. I knocked at his door and his wife answered.
387 I says—so she opened the door and she let me in and I said, Jean, is Frank in, and she says he is down in the basement, and she happened to come down in the basement and I went down there and she was washing some clothes. I asked her, do you wash clothes today? We were talking and Frank was down there taking care of the furnace. Frank, by the way, what are you doing tomorrow and he says, he says, well, I don't know. Can I use your .22? I figured on going out for rabbits and he says—and the funny part of it, now I remember it, he says, I could have it and don't go and shoot yourself.

Q. He said, don't go ahead and shoot yourself?

A. Yes, don't go ahead and shoot yourself with it and I laughed.

Q. Did he give you some shells?

A. Yes.

Q. How many shells did he give you?"

At the top of this page and written in ink with the name Vincent Ciucci, and his signature following is the following language:

"The shells and the gun were given to me in the upstairs part of the apartment by Frank Caruso
388 in the presence of his son, Joe Caruso."

And following is the signature Vincent Ciucci, all in ink.

"A. I didn't count them because we went back upstairs then.

Q. Were they in a container, the shells?

A. No.

Q. How did he give them to you, loose?

A. Yes.

Q. About how many were there?

A. About ten, twelve, maybe thirteen.

Q. Then did you go home?

A. I went upstairs first. I broke the gun.

Q. When you say you broke it, you took it apart?

A. Yes, and the son got me the paper to wrap it up and I went home with the truck, went home, went in the kitchen, stood there for a minute. My wife was back in front.

Q. Let me ask you, when you got home, what did you do with the shells, with the ammunition for the gun, and what did you do with the gun?

A. Well, the gun, I put it together. I put it in the back closet.

Q. In what portion of the house was the closet?

389 A. That would be where the hot water tank is.

Q. Is that along the Albany side of the house and towards the rear?

A. Well, it is right where the middle partition is where it cuts off—the partition, wait a while. The partition cuts off the bedroom from the kitchen. Wait a while. Here.

Q. You are indicating at a plat you drew, are you?

A. Yes, here it is.

Q. Answer the question first. Your drew this diagram that you are looking at, did you?

A. Yes.

Q. Now, which portion of the house did you place the gun in?

A. Right here.

Q. And that would be at the southeast corner of your premises, is that right, in the bedroom?

A. Well—

Q. All the way in the rear?

A. Yes.

Q. On the Albany Avenue side?

A. Not up against the wall.

Q. What is that you are indicating there?

A. I indicated that we had a—

390 Q. What are you pointing to?

A. I am trying to tell you. It isn't a—one of these old time things.

Q. A dresser?

A. No, it is big as—about as big as the door. It has got two doors.

Q. A wardrobe?

A. Yes, two drawers on the bottom and another big one.

Q. Where did you put the gun?

A. I put it right in there. I definitely know that because the kids, then are generally—"

Strike that.

"they generally get up at night to go and I put it in there. I put it back in there in the corner of the partition, right in the back where the clothes is.

Q. What did you do with the ammunition?

A. That I left in my jacket, right there in my jacket, my jacket pocket, that's right.

Q. What kind of jacket was it?

A. Oh, gray with a fur collar.

Q. And you left all the bullets in that jacket
391 pocket?

A. To my knowledge, I left them all there.

Q. Did you have any other ammunition in the house?

A. Yes, I had some 12 gage shotgun shells.

Mr. Gutknecht: Q. How many 12 gage shotgun shells did you have?

A. Well, I bought them that day when I went with Frank, I bought it that day with him.

Q. Where did you buy them?

A. Where did I buy them?

Mr. Bloch: Q. Yes.

A. Well, was it Ogden Avenue or Roosevelt Road where you go to Villa Park? Which one do you take to go to Villa Park? Anyone know offhand?

Q. Who was with you when you bought the shells?

A. I went in the store and—I don't know, wait awhile. I'm sorry, on that side, he bought his license. I bought mine on that side. I went in and bought my license and my shells.

Q. Who were you with just before that?

A. Frank.

Q. Caruso?

A. Yes, I went across thes treet and I bought them.

392 Mr. Gutnecht: Q. What kind of place was it where you bought yours?

A. It is a sporting goods store.

Mr. Bloch: Q. How far west would that be on Roosevelt Road? Was it beyond Harlem?

A. I don't know. It is before Harlem. Yes. Wait.

Q. Was it before Austin Boulevard?

A. I don't know. I mean probably—I can take you there.

Q. It was somewhere west?

A. Yes.

Q. You went into one store by yourself?

A. Yes, I bought my shells.

Q. Where was Frank when you bought the shells?

A. He was sitting in the car.

Q. Did he buy shells too?

A. No, I am getting to that. He didn't buy no shells then. I come into the car with my shells, 12 gage and when we were driving—

Q. One second. How many shells did you buy?

A. One box.

Q. How much was it?

A. How much was it?

Q. Yes.

393 A. 2.95 or 3.05, I think. I think it was $3 or 2.95, I think it was.

Q. When was it that you bought that?

A. When?

Q. Yes.

A. That was about at most, at most three weeks ago.

Q. Did you own a shotgun that shells or ammunition of that type would have fit?

A. What?

Q. Did you own a shotgun that ammunition of that type would have fit?

A. Not that I own one myself. My dad has two. The way it was, my mother had bought my dad a shotgun and my dad has his dad's gun. Then my mother and dad were separated so my dad—my mother was supposed to give me the gun of one he had. He has both of them and when we go hunting, he takes both of them along.

Q. You didn't have either one of the guns in your house at all?

A. No.

Q. They are both in your dad's house and your dad has two shotguns?

394 A. He should have two guns, a pump gun.

Q. And the ammunition you bought would have fit the shotgun?

A. Yes.

Q. What gauge was it?

A. 12 gauge.

Q. What did you do with that ammunition?

A. I used a few that day with Frank and the rest, the rest I didn't use I brought them back home.

Q. Where did you put them in your home?

A. Well, I put them on top of the high chiffarobe.

Q. The chiffarobe also that you placed the gun in? What chiffarobe, where is the chiffarobe in that house? What bedroom, indicating on that diagram you drew.

A. In the kids' bedroom.

Q. Is that in the same bedroom where the wardrobe was where you had placed the shotgun in?

A. I didn't put no shotgun in.

Q. I mean you placed the rifle in, was it in the same bedroom?

A. No, I didn't place—the rifle I placed in the chiffarobe was in the kitchen. The shotgun shells I put on top of the chiffarobe in the bedroom over

395 there.

Mr. Gutnecht: Q. The boy's bedroom?

A. Yes.

Mr. Bloch: Q. That was in the back bedroom?

A. Yes.

Q. Was that beyond the reach of the children?

A. Yes, I mean unless—

Q. When had you last seen those shells?

A. Gee, I don't know, I don't recall.

Q. Were they in a drawer?

A. No, the last I know of them, they were right in the box.

Q. And the box was in where?

A. It was on top of the chiffarobe.

Q. And to your knowledge, that is where they were up until now as far as you know?

A. As far as I know unless my wife moved them around or something.

Q. How many of the shells would you say that you had used up?

A. Out of the shotgun?

Q. From the shotgun, yes.

A. Out of the box?

Q. Yes.

396 A. At most, very most, ten, I mean at most.

Q. How many would you have left in the box, to your knowledge?

A. There is 25 in a box.

Q. So there should be about fifteen in that box, is that right?

A. Yes.

Q. And incidentally, you must have used your father's shotgun when you fired those shells, did you?

A. Yes.

Q. When had you returned your father's shotgun?

A. My dad picked it up.

Q. When?

A. Oh, maybe a few days after that. When I don't know exactly.

Q. You haven't had the shotgun in that house since then?

A. No.

Q. I understood you to say that you also had a BB gun there?

A. Well, that was left there from when we took over the store.

Q. That only shoots little BBs, is that right?

397 A. Yes.

Q. There was no other gun to your knowledge in the house, is that right?

A. No, no other gun to my knowledge in the house.

Q. What windows were barred?

A. They got bars on them.

Q. Yes.

A. The—

Q. Except the store windows?

A. But the window in the baby's room, I mean it is on the inside, it is barred from the inside but that window didn't close. It closed but when there was a strong wind, it would blow it open.

Q. The window, the baby's window would blow open?

A. Yes.

Q. But it wouldn't affect the bars that were there?

A. No, the bars were on the outside. The window is inside.

Q. A person couldn't get in?

A. No, definitely couldn't get in.

Q. When you went to bed last night, all the doors were closed, weren't they?

A. Well, all I know definitely it was closed was the one in front of the store. This door here I know
398 definitely it was closed because I locked it myself. I locked the screen door with the latch and I locked this door with two keys; that I know for sure. This one here, I still—I can't say I know them was locked for sure, I didn't try them.

Q. What time did your children go to sleep last night?

A. Boy and the girl, boy and the girl were—I would say roughly about—

Q. That was Vincent?

A. No.

Q. You only have one boy?

A. I'm sorry, I mean the two girls went to bed.

Q. Virginia and Angelia?

A. Yes, the boy was helping me in the store. The boy went to bed about twenty minutes after ten, near closing time. From ten-fifteen to ten-thirty, he went to bed and the kids were already in bed before he went to bed. Maybe a half hour before that, they went to bed.

Q. So by ten-thirty or eleven o'clock, they were all fast asleep already, is that right to your knowledge?

399 A. Yes, to my knowledge, yes, sir.

Q. They all sleep in the same bedroom?

A. Yes, sir.

Q. Did your wife go to bed?

A. I don't know."

Mr. Doherty: Just a moment, please. That reads "What time did your wife—

Mr. McGovern: I am sorry. It does read that way.

"Q. What time did your wife go to bed?

A. I don't know.

Q. Approximately?

A. Maybe about 11:30, quarter to 12.

Q. And what were you doing when she went to bed?

A. I was reading the paper.

Q. How long did you stay up reading the paper?

A. Well, I stood up, I read the paper, then I got up and washed myself, washing myself and I sit down and I had coffee, had a cup of coffee and I read a joke book and I smoked. I don't know, I smoked cigarettes, how many, I don't know, and then I went to bed.

Q. All in all, how long were you up after your wife went to sleep?

A. I really wouldn't know. I don't know. I didn't
400 pay no attention to the time.

Q. Would you estimate the time you went to bed? Was it after midnight?

A. Yes, it must have been after midnight.

Q. Was it after one o'clock in the morning?

A. That I don't know.

Q. Didn't you tell me a little while ago that you did go to bed about after one in the morning?

A. Well, I told you what time—I know it was after—it must have been after 12. I don't know the exact time. I don't know, I mean—

Q. If it was a couple of hours after your wife went to bed, wasn't it?

A. Not that long.

Q. About how long after your wife went to bed then?

A. Maybe half hour, I don't know, half hour, half hour.

Q. Do you recall that you said last night that you stayed up to 12:30 A.M., don't you?

A. I don't remember.

Q. Well, anyhow it was sometime after that you went to bed?

A. Well—

401 Q. Your wife was sleeping when you went to bed?

A. She wasn't sound asleep because, that I know, because when I got in bed, she said, Vince, did you pull the alarm for the clock.

Q. What did you say?

A. What? I says, yes, that it was pulled.

Q. Was it generally your custom to pull the alarm for the clock?

A. Yes, because I am generally the last one who goes to bed all the time.

Q. Who generally looks after locking up the doors?

A. Well, if—like I say, if I come home, when I go home from bowling, I come in through the side door.

Q. On the Albany Avenue side?

A. Yes, I kick at that door and she opens the door for me and I get in and I close it. There is a bolt there.

Q. You always put the bolt on there?

A. Yes, I put the bolt in.

Q. With the bolt there, you could see that the door is locked from the inside? You don't have to
402 try it in order to know that it is bolted?

A. I wouldn't say that now.

Q. You motioned with your hand with a swing. Is it sort of a latch you pull?

A. Well, no, it is these steel doors, one of these steel doors because if you—if your door—like I say, if the door is not even with that hole—

Q. Yes.

A. —the latch won't go in there.

Q. But if it is even, the latch slides right in and locks the door fast, is that right?

A. Yes, and there is a hook.

Q. When you come home from bowling, you always ask your wife to open it?

A. Yes.

Q. And you kick at it?

A. Yes.

Q. Were these doors at ground level?

A. No.

Q. How far up above the sidewalk?

A. One step up.

Q. Because of that, generally you keep those closed?

A. Yes.

403 Q. Because of the fact they are on ground level, you saw to it they are locked?

A. Well, right off the sidewalk you can come in.

Q. Because people can come in off the sidewalk, you are careful about locking your doors, aren't you?

A. Yes.

Q. And you were careful last night, weren't you, about it when you went to bed about locking them?

A. You are confusing the—the door being definitely locked, I don't know, because—

Q. Well, can I ask you this question? You mentioned that when you kicked at the door, that your wife has to come and open it, is that right?

A. Yes.

Q. When you come in, you turn around and bolt the door again?

A. Yes, because she is in bed. Then I undress and then I go to bed.

Q. All right. Now, when you went to bed, did you fall asleep right away last night?

A. Oh, God no, I wouldn't say right away.

Q. How long were you laying awake before you went to sleep? Were you reading in bed?

404 A. I was tired because I worked and I worked in the store until that time. I mean I didn't read in bed or anything. I was tired. I fell asleep. I would say I fell asleep quick. Not fast, but I mean I fell asleep in a short time.

Q. And then what was the next thing you remembered after you fell asleep?

A. The next thing I remembered I jumped up and it was warm. It was heat. It was warm and I couldn't catch my breath and I hollered for my wife and then I jumped up. I couldn't see nothing. Full of smoke, and I made a dash into the kitchen and—"

And at this point in the statement there is a little arrow and following and written in longhand, "and felt something hot on my back".

"—from there, I dashed into the door to go into the store and I ran for the phone. I ran for the phone and I don't know, just before I got there, I tripped over or fell on something. I don't know whether I fell or tripped, but I couldn't catch my breath no more. I was screaming and I went right to this door here.

Q. In the front of the store?

A. To this door here and I just banged it. I don't 405 know how, I just broke it and got out through there and got by the screen door.

Q. You have been indicating that the door you banged is the front door, is that right?

A. Yes, the door in the store.

Q. The door was locked?

A. Yes.

Q. You tried to open it first?

A. What?

Q. You tried to open it first?

A. I don't know if I did. All I know I went and I hit the thing. If I tried, I don't know. I just screamed. I don't know if I did or didn't. I don't know.

Mr. Gutknecht: Q. When you got up, why didn't you try to wake your wife?

A. Well, I screamed. I guess when I got up, I hollered her name. I don't know if she was in bed with me or not. I couldn't see from the smoke from here to over here. It was so smoky. You know that I was gagging for breath.

Mr. Bloch: Q. Is that what woke you up?

A. The heat and the smoke and then there was some noise.

406 Q. After you woke up, you heard some noise?

A. When I jumped up. Well, I mean I don't know. I know when I got up, I got up, it was from the heat, it was warm, you know.

Q. You know it was the heat that woke you up, is that right?

A. I guess it was the gagging got me up and the smoke. I hollered for my wife and I heard some popping noise and I ran into the kitchen.

Q. What kind of popping noise did you hear?

A. You know like if you take the light bulb and you break it, it pops.

Q. Yes.

A. Noise like that there.

Q. How many pops like that did you hear?

A. Oh, I don't know, I don't know.

Q. Well, that was after you were running at the time?

A. I don't know, I don't know. You mean—you see, when I got up, there was that—when I ran in the kitchen, I forgot even—you know, when I jumped up now and hollered for my wife, the other reason I kept running, something hot hit me all over the back, hit me on the back here, that hit me on the back when I
407 was there going into the kitchen—in the kitchen, but I don't know.

Q. Let me ask you some more questions. When you went to sleep, you went in the same bedroom with your wife, did you?

A. Yes.

Q. And your children sleep in a separate bedroom?

A. Yes, separate bedroom.

Q. What were you wearing when you went to sleep?

A. I just sleep with my shorts. I always had that habit.

Q. You were just in your shorts?

A. Just in my shorts.

Q. And I understood you to say when you first got up, you screamed and you ran for the kitchen, did you?

A. No, I jumped out of bed. I jumped out and I hollered, Anne. I hollered her name and I couldn't catch my breath from all that smoke. I catch all that smoke, you see, and—

Q. Which side of your bed were you sleeping on?

A. Which side of the bed was I sleeping on?

Q. Yes.

A. Right over here, this side over here.

408 Q. Just one second. If this is the Albany side and you have got a portion—"

Strike that.

"—and you have got a partition you said between the two bedrooms. Let us see, there are two bedrooms here?

A. Yes.

Q. Where would that Albany Avenue door be with relation to the bedroom?

A. Right here.

Q. Next to the bedroom, that would be right adjacent to the room where you were sleeping in or right next to it?

A. No, it is in the same room.

Q. In the same room.

A. Yes.

Q. Now, the pillow part of the bed where your heads would be is on this wall?

A. Yes.

Q. That would be the south wall of the bedroom?

A. Yes.

Q. And the feet part would be extending straight out from the wall, would they? Indicate how that bed would be?

409 A. Yes, you are right.

Mr. Gutknecht: Q. The bed is where? Is this your bed, is it?

A. Well, here we have a dresser but the entire bed is out here.

Mr. Bloch: Q. Who slept closest to Albany Avenue?

A. Who slept closest to—

Q. To the Albany Avenue side?

A. My wife slept there.

Mr. Gutknecht: Q. Your wife?

A. Yes.

Mr. Bloch: Q. Where did you sleep?

A. And I sleep over there.

Mr. Gutknecht: Q. What side did you get out of?

A. That's right, this side.

Q. This side?

A. Yes.

Mr. Bloch: Q. The side you got out of would be the side furthest from Albany?

A. Yes, the furthest, closest to the kitchen and furthest from Albany.

Q. And you ran to the door then in the bedroom then, didn't you?

410 A. What?

Q. Didn't you run to open up the bedroom door?

A. No, I ran out over there.

Q. That was the closest door. Why didn't you run to the bedroom door?

A. Why, I don't know. I mean that is all I know. Why?

Q. Where in the kitchen did you go? You say you ran to the kitchen?

A. No, I jumped up and ran. When I ran in the kitchen, why I run in the kitchen?

Mr. Gutknecht: Q. Where did you go in the kitchen, he asked you?

A. When you came right here by this door, right here off to the side is the door leading into the grocery store. It is a push door, a swinging door.

Mr. Bloch: Q. That would be toward the front?

A. Yes, it would be right here. This is our bedroom right here, and the door is right here and right around here.

Q. Why did you run in that direction?

A. Well, I ran for the phone.

411 Q. Did you make a call?

A. What?

Q. Did you make a call?

A. No, I didn't make it.

Q. Did you take the phone off the hook?

A. Yes, that I know I had the hook off, the phone off the hook, because the fire there, when I grabbed it, I fell. I lunged for it. You know what I mean, knocked it down.

Q. When you lunged for it, did you fall?

A. Yes.

Q. What did you fall on?

A. I don't know what I fell on.

Q. Did you fall on the floor?

A. Yes. You mean in the store? Yes.

Q. In other words, then—

A. I couldn't breathe no more, going nuts and I just ran for the door over here and broke the glass.

Q. Why didn't you run for your children?

Mr. Gutknecht: Q. Where is the store here? Where is the phone? Where is the phone?

A. Here is the counter in the middle and the phone is right here by the cash register.

Q. Where is the door from your bedroom into there?

A. Right here. From my bedroom, you mean?

412 Q. Yes.

A. Oh no, the bedroom is here.

Q. You go through the kitchen?

A. Right by the corner.

Q. Where is the opening to the store?

A. Right over here.

Q. The counter is in here?

A. Yes. It don't go all the way.

Mr. Bloch: Q. When you went to bed, your wife was on the east end of the bed, that would be right alongside of the Albany Avenue wall?

A. Well, it would be over on this side.

Q. On the Albany Avenue side?

A. Yes.

Q. And she was facing toward Albany, was she?

A. What do you mean facing toward Albany?

Q. She was on her side?

Mr. Gutknecht: Q. Not facing towards you?

A. Oh, no. she was facing toward me. Her back was towards Albany and her face was towards the kitchen.

Mr. Bloch: Q. I see, and which way were you facing, were you facing her?

A. Well, I generally lay down on my back.

413 Q. Did you talk with her while you were laying in bed?

A. No, the only thing was, she said, did you check the alarm, and I says, yes, and that is all.

Q. After that did you notice whether she was sleeping then?

A. I guess she was.

Q. There was no other weapon in the house?

A. As far as my knowledge, there was none except them two I told you about.

Q. Where did you place the jacket that you said

contained the ammunition that Frank Caruso gave you last night that fits this rifle there, the .22 rifle?

A. I don't remember if I placed it in the bedroom or in the kitchen chair. I don't remember which it was. To tell you the truth, I don't remember.

Q. It was just last night so just take a little time and tell us how you undressed and tell us where you placed that jacket?

A. When I came in, I threw my jacket on the chair there in the kitchen. I placed my jacket there. Now,
414 if it was moved—wait a minute, yes, that's right, I am almost sure of that. When I took off my jacket I laid it on the chair. Yes, I laid it on the chair—wait, yes, I laid it on the chair.

Q. Now, where in the children's bedroom were there beds placed?

A. Well, like I said it, I noticed it last night. My wife rearranged it. Before the kids used to sleep in the one big bed by themselves. The way it was situated last night was like this, like this—

Q. One bed —

A. This is a roll-away bed, not a roll-away bed, one that you open and you close with a spring.

Q. That would be in the corner at the southwest corner of the bedroom?

A. That's it, right there.

Q. Would that be the southwest corner of the bedroom? Well, this is east.

A. This is Albany.

Q. Albany would be east.

A. Albany and that would be Kedzie and you look this way, it would be east, so that would be the west.
415 Q. The southwest corner of the bedroom, and north is this direction?

A. Yes, southwest, right.

Q. Who slept in that bed?

A. The boy was in there.

Q. Where was the other bed?

A. And the other bed was right next to it like this, just like this. There was a bed there. The bed was there and then there was a chiffarobe over here and a chiffarobe over there.

Q. Now, you have indicated a bed right directly alongside of the bed the boy was sleeping in that you said was the southwest corner, is that right?

A. Yes.

Q. The second bed you are talking about is right alongside?

A. That's right.

Q. Now, the pillow part of the bed or headboard was where?

A. They were all the same, up against the wall.

Q. That is the south wall, is that right?

A. Up against that wall.

Q. Who slept in the bed that was right alongside of the boy's bed facing in the same direction?

416 A. The two girls.

Q. I understood you to say that you noticed last night that the beds were rearranged?

A. Well, what I mean is, my wife also had put draperies up on these windows and we never had them. Because she called this girl in there—

Q. Were the beds in any other position before?

A. Well, yes. Before the way we had the kids' room was, the thing was—the bed was like this.

Q. With the headboard up against the Albany Avenue wall?

A. Well, yes, and the headboard was up there, but the kids would sleep facing—my boy would sleep long side on the bed and the two girls would sleep on the top or sometimes, you know, I mean, but they sleep in that bed.

Q. And the first time you noticed that the beds were rearranged was last night?

A. She didn't—she was cleaning house.

Q. But the first time you noticed it, it was last night,

A. That is when she did it. See, after she called this woman to show her how she was fixing the back. I think she showed her how the draperies was.

417 Mr. Gutknecht: Q. Where was the little cot before that, this roll-away thing you call?

A. I think she had it in that bedroom but there was no room in there, I mean the way it was arranged at that time.

Q. I see.

Mr. Bloch: Q. Now, you have indicated that the entrance to your bedroom is on the kitchen wall which would be the wall parallel to Albany Avenue but further west, is that correct?

A. The door is on that wall. It is right in the middle there.

Q. The one leading to the kitchen?

A. The door?

Q. Yes.

A. Into the kitchen?

Q. The door of your bedroom that leads into the kitchen—

A. Yes.

Q. —is real close to the south wall of your bed-

room which is next to the bedroom where your children sleep in?

A. Yes, in other words, to get in the kids' bedroom you have to go through here.

418 Q. You have to walk through the door leading into your bedroom and make a turn into the children's bedroom, is that correct?

A. Yes, right, you can see it right there.

Q. When you say you can see it right there, do you have to walk into your bedroom and make a right turn to get into the children's bedroom?

A. Yes, to get in there.

Q. Is that correct?

A. Yes.

Q. Now, when you went to bed last night, where did you place that jacket that had the ammunition that you got from Frank Caruso?

A. When I went to bed, I didn't pay no attention to my jacket.

Q. When you last took the jacket off, you put it where?

A. I put it over there here, I think by that chair over there, I threw it on that chair there.

Q. You are indicating a chair that would be in the kitchen, is that right?

A. Yes.

Q. Near the door to your bedroom?

A. Yes, well, right there, it is just an opening.

419 Q. Well, it would be just north of the opening to the door? It wasn't blocking the door, was it?

A. Well, it is even with the opening but off to the side, you see.

Q. Off to the side, you mean deeper into the kitchen?

A. That's right.

Q. Further west?

A. That's right.

Q. And you had no other bullets, no other .22 bullets than the ones that were in your jacket?

A. No, I had the ones that were in my jacket and I had a few—I had five or six of them besides that when I had those shotgun shells.

Q. Where is—"

Strike that.

"Q. Where, in the same box that the shotgun shells were in?

A. I think they were in a paper bag.

Q. Where was the bag?

A. Well, they were together with my shotgun shells.

Q. A few minutes ago, I asked you whether or not you had any other bullets and didn't you tell me that the only bullets you had were the ones that
420 Frank Caruso gave you that you put in your jacket pocket?

A. The shot gun shells.

Q. But you didn't have any other .22 bullets other than the ones that you had in that jacket with the fur collar?

A. I had about three or four of them. When I went hunting with my dad, I had them left and I had found them in my hunting clothes, you understand. When I came home I found them in my clothes and there must have been three or four of them. I don't know the exact number."

Mr. Papanek: "Q. Why would you have those? You didn't have any .22 gun?

A. When we go hunting, we have a .22 gun with us when I go hunting with my dad.

Q. Your dad has two shotguns?

A. Yes, but we generally go hunting with four guys.

Q. Does he have a rifle besides shotguns?

A. .22 pump.

Q. Who has that?

A. My dad.

Q. So your dad has three guns, .22 rifle and he
421 had two shotguns, did he?

A. But the rifle, he lets this guy we go hunting with, this guy who lives in Downers Grove, he keeps it at his house.

Q. What is that man's name?

A. Pat."

And then on this page is a pen and ink change of the striking out of the name Pat and the writing in ink of the name Pep, P e p.

And below that the name Vincent Ciucci, making that answer to read:

"Pep is his name, Belluomini.

Q. How would you spell it?

A. I don't know.

Q. Spell it out the way it sounds to you. I don't get the pronunciation. What is it?

A. B-e-l-o-m—

Q. o-m-i-n-i?

A. omini.

Q. That is how you would spell it not knowing how he would spell it, is that correct?

A. Yes.

Q. Where does he live at?

A. Downers Grove.

422 Whereabouts in Downers Grove?

A. I don't know. It is out—it is out in the country.

Mr. Gutknecht: Q. Can you find it?

A. What?

Q. Could you find it?

A. If I went out there?

Q. Yes.

A. Yes, I think I could find it.

Q. Does your dad know?

A. Yes, my dad knows. My dad knows.

Mr. Bloch: Q. He is the fellow that your father generally lets keep that rifle?

A. He keeps the .22 over there.

Mr. McCarron: Q. What does he do.

A. Crane operator.

Mr. Bloch: Q. And the few bullets you said you had with the shotgun shells were on top of the chiffarobe?

A. I don't understand.

Q. The few bullets that you said you had from that hunting trip that you found in your clothing—

A. Yes.

Q. You said you put that in the bag with the
423 shells, with the box of shells?

A. It was with the box of shells. I don't know if my wife had put them in the box or where she put them.

Q. Your wife doesn't play around with a gun?

A. You are talking about the shells, aren't you?

Q. What would she play around with the bullets for?

A. I put them in the bag.

Q. She never moved them to your knowledge, did she?

A. She might have, I don't know.

Q. But you don't know, do you?

A. No.

Q. Now why do you keep on saying where your wife put them?

A. I told you I put them in a paper bag.

Q. And as far as you know, that is where they were?

A. As far as I know, let's put it this way, I put them in the paper bag and put them with the shotgun shells. They were right there with the shotgun shells.

Q. You said that you tried to make a phone call
424 and you fell down, is that right?

A. I tripped.

Q. You tripped?

A. Yes.

Q. What did you do then?

A. I couldn't catch my breath, nothing. I ran for that front door and I broke that door.

Q. Did you try first, try the door?

A. I don't remember if I tried it or not. I can't say if I tried it or not. I don't remember. All I know I bashed that glass. If I tried the door, I don't know.

Mr. Gutknecht: Q. Did you cut yourself in bashing the glass in?

A. I don't know if I got these cuts from that or not.

Q. Did you see anybody outside once you got out?

A. When I got out there, I was hollering and I noticed a car going towards Kedzie on Harrison, and he stopped, and I told him, get the Fire Department, and I heard some other people hollering, you know.

I don't know what it was. I don't know what it was, and that is all I remember.

Q. Now, going back to when you got these bul-
425 lets from Caruso, how many did you ask him for?

A. How many did I ask him for?

Q. Yes.

Q. I told him give me a few. I says—how did I put it now. I said, give me a few. I had a few and I will pick some up tomorrow. I will pick the box up tomorrow.

Q. Did he say how many he gave you?

A. I don't know if he mentioned how many there were or not, but I know I put them in my hand and put them in my pocket.

Q. Did you say to him you only needed five?

A. No.

Q. Did you say to him you only need six?

A. I didn't quote.

Q. I am asking you, did you say that?

A. No.

Q. What did you say when he gave you the handful?

A. I don't know.

Mr. Bloch: Q. What did he say to you about ammunition when you asked for it?

A. What do you mean what he said? He says, that is all I got, a few.

Q. He says, all he has got is a few?

426 Yes, because his kid went to get them.

Q. Just a second. I don't know what his kid went to get."

Mr. Doherty: Read it correctly, please.

Mr. Papanek: "I don't know". I beg your pardon.

That should read—I will start with the question. "Q. Just a second. I don't want to know what his kid went to get. He said all he has got is a few.

A. Yes.

Q. Did he say all I have got is about five?

A. I don't remember if he said that or not, I mean to tell you the truth.

Q. Didn't you say that is all you will need?

A. No, I know I says I need—that's right, I know —I don't know if he said that—I don't know. He said something. He said something and I says, well, that all right, I will pick some up tomorrow, I have got a few.

Q. Would you say that is what was said, that he said all he has got is about four or five and you said, that's all right, that's all I need? Was that said, was that said to your knowledge or not?

427 A. He might have said I got four or five or something like that there.

Q. Did you respond and say, that all right, that's all I need?

A. What?

Q. Didn't you respond, that's all right, that's all I need?

A. I said that I had a few, that's all right. I have got a few and I will get a box tomorrow.

Q. As a matter of fact, did he tell you that they were short ones or long ones?

A. Long ones.

Q. They were long ones, were they, that he gave you?

A. Yes, they were long ones.

Q. Did you have any conversation about long or short shells?

A. Well, I know that I said that shorts don't work good, shorts don't work in an automatic.

Q. But he gave you the long ones then, is that right?

A. Yes, he gave me the long ones. He gave me all long ones.

428 Q. As a matter of fact, didn't he say that they are short ones he has and you have to get long ones because they won't work in a repeating action in that gun unless they were long ones?

A. They have got to be long.

Q. Didn't he tell you that you would have to jump the gun with each individual shot with short ones he was giving you?

A. No, he says, now you open the thing up. He says, you put the shells in. You know you pull the thing up, you put the shells in. Now I remember. You push that thing up, put the shells in and then you push that bolt back and you let it go and one goes in and you keep bang, bang, bang, and it goes automatic.

Q. He was telling you about it?

A. Yes, he told me that, yes.

Q. Because you had never used that gun before, is that why he was telling that to you?

A. I think I used it once, to shoot rabbitts."

And then that word is stricken out, the word rabbitts and in pen and ink is written over it the word rats. And the signature Vincent Ciucci below it.

Making the sentence then reading:

429 "A. I think I used it once to shoot rats if I am not mistaken, but anyhow I know how to handle guns. I have been going hunting a few years.

Q. But you are definite about the fact that he told you that you put the four or five shells in and that after you had pulled the bolt back, that it would work in a repeating action?

A. No, here is what he said. You put the bullets in through the stock. You take this rod out. You put your bullets in through there, you slam that rod down and you close it. Then you take the bolt up. There is a round thing like that, you take that and you bang the first time. That injects a shell into the chamber and after that you don't have to, you see, you just keep shooting and it fires by itself.

Q. You call that a repeating action?

A. That is an automatic. I call it an automatic.

Q. That is what he told you, how it would work with the shells he gave you?

A. Yes.

Q. With the cartridges he gave you?

A. Yes.

Q. That gun was empty, was it?

430 A. Yes, when I put it in there, I put it in that closet. It was empty because I had the shells in my jacket pocket. When I put that gun in there, it was empty.

Q. Where do you work?

A. Where do I work?

Q. Have you got a job?

A. Not steady, off and on.

Q. Who do you work for?

A. Russell Moving.

Q. Where are they located?

A. Right next door.

Q. How long have you been working for them?

A. I work for him for about, off and on, I would say two to three months.

Q. How much a week do you earn?

A. It all depends.

Q. How many days did you work this last week?

A. This week I worked yesterday, I worked yesterday, I worked Thursday, and I worked Wednesday and I think them were the three days I worked.

Q. Did you get paid?

A. Wednesday, Thursday or did I work Wednesday? Yes, that's right.

431 Mr. Gutknecht: Q. How much did you get paid a day?

A. $14.

Mr. Bloch: Q. $14 a day?

A. Yes.

Q. Who would tell you when you would work or wouldn't work?

A. Well arrangements we had, that's right, there, the lumber yard would call for a truck and they would call the store and tell my wife when they need a truck. My wife would say—my wife answers the phone. They will send a truck out and I would take the truck and I would go out.

Q. Who would notify you?

A. What?

Q. Who would notify you whether you were going to work or not?

A. Well, they would tell me at night, like if I worked on Thursday because I was on Thursday, the yard boss Rossi, I will ask him about tomorrow. Well, call up about 9 to 9:30.

Q. In other words, you would check the night before with Rossi?

A. He is the yard foreman.

432 Q. He would tell you whether you work or not?

A. He would say call up from 9 to 9:30. If he didn't need me, he will say no, but he always said, call up 9 to 9:30.

Q. In fact, he said you can work or not?

A. That's right.

Q. When you worked for him yesterday, what did he say? You said you worked Friday?

A. Yes.

Q. What did he say? Did he tell you to come to work Saturday or did he tell you to call up?

A. He didn't say nothing. No, when I left, he didn't say nothing about it. I didn't mention it to him because on Saturday, I wouldn't be able to work on Saturday any way so I told this Sam, on a Saturday—

Q. Why?

A. Because I give my wife help in the store on a Saturday. She couldn't handle it.

Q. What did you do on Saturday?

A. Pardon?

Q. When did you open your store?

A. My wife always used to open at 7 in the morning.

Q. What did you do?

433 A. Sleep until 8.

Q. What time would you get up?

A. 8, 8:30, around there.

Q. When you got up, on Saturday, you would help her?

A. Yes.

Q. How long would you work with her?

A. Well, I have been generally driving the truck on Saturday, but I stayed there, stay in and work.

Q. All day long wait on trade?

A. That's right.

Q. Now, I understood you to say just now that you would generally drive the truck on Saturday, whose truck?

A. Russell's truck. I told him now because I had told him at the beginning of the week that I won't be able to work on driving a truck on Saturday because I have to stay with my wife.

Q. One second. How would you know that you weren't going to work this Saturday, that you were going to help your wife?

A. What do you mean?

Q. In other words, you said you used to drive the truck?

434 A. My wife even told Russell. Russell and my wife were standing right there, that I wouldn't be able to drive Saturday because he came in my house.

Q. When was this conversation when your wife, you and Russell were standing together?

A. Saturday this week.

Q. Was this the first time that you told or your wife told Russell that you wouldn't be able to work Saturday?

A. I wouldn't know.

Mr. Gutknecht: Q. What was the reason you told him that you wouldn't be able to work Saturday?

A. You see, before my sister-in-law, both of them —one used to come and help my wife on Saturday because I was in debt and I couldn't afford—I mean I was making this money. He was paying me $2 an

hour, no income tax. In other words, if I go and drive five hours he would give me ten dollars at the end of the day or he would give me whatever hours I put in, he would pay me.

Mr. Bloch: Q. Why was it you told him that this Saturday you weren't going to work, you and your wife?

435 A. I guess my wife said she wants me there at the store because I am all straight with the debts.

Mr. Gutknecht: Q. Because your sister isn't here?

A. Why make them come down and make them work?

Mr. Bloch: Q. Now whose sisters were they, hers?

A. I have no one, I am alone.

Q. Her sisters worked every other Saturday up until now and helped her, is that right?

A. My sister-in-law, Connie, helped at the beginning, and her sister, Teresa.

Mr. McCarron: Q. How old is Teresa?

A. Thirty.

Mr. Bloch: Q. Were you brought here last night to the hospital?

A. Yes.

Q. What time?

A. I don't know what time it was.

Q. Who was the first person you talked to after you got here?

A. A woman downstairs asked me my name and so forth.

436 Q. One of the hospital employees?

A. One of the hospital aides.

Q. Other than the hospital employees or hospital aides, who was the next person you talked to?

A. Besides them?

Q. Yes, not counting hospital employees.

A. My first one was my brother-in-law, Jake.

Q. What time was it?

A. I don't know what time.

Q. Was it this morning?

A. Yes. It was—

Q. Was it before nine o'clock in the morning?

A. I tell you I don't know what time it was. I know he was the first one.

Q. Was it before noon?

A. I don't know what time it was.

Q. Could it have been shortly after noon? You had your lunch, you ate today, didn't you?

A. Yes, I ate. They were putting that stuff in my nose. I ate this afternoon.

Q. Was it before you ate?

A. Yes, before that.

Q. Who was with your brother-in-law?

A. My brother-in-law, Jake and let that other guy 437 in, Marzullo.

Q. Your brother-in-law and Vito Marzullo, only those two people?

A. That I seen. I don't know if there was anybody else.

Q. When was the next time today that you saw anybody else?

A. Then they took me into that ward and my dad and my uncle came.

Q. How long after Marzullo had been here was it?

A. How long after?

Q. Yes.

A. I don't know.

Q. Was it an hour?"

Strike that.

That should read:

"Q. About, was it an hour?

A. To me it seemed like a year, to me it seemed like a year.

Q. That was the first time your dad came?

A. With my uncle.

Q. What is your uncle's name?

A. Bennie.

Q. How long did they stay with you?

438 A. I don't know. The woman changed me, washed me.

Q. While they were here?

A. Yes.

Q. Did they leave?

A. They stayed for awhile and they left and he said he would see me.

Q. How long was it before you saw the next person other than hospital employees? Incidentally, what is Bennie's last name?

A. Tota.

Q. When was the next time you saw anybody? Who was the next person you saw then?

A. I don't know.

Mr. Bloch: That is all.

And the end of the statement is signed with the signature of Vincent Ciucci, and written under witnesses, Raymond V. Burton, and Joseph J. Smith.

The Court: We will take a recess.

Mr. Doherty: May we have the record show that they began reading at 10:20 A.M. and they finished at 11:48 A.M.?

The Court: It may so show.

We will now take a recess.

439 You may take the jury out of the box.

(Whereupon a recess was had after which the following proceedings were had within the presence and the hearing of the jury, to wit:)

The Court: You may proceed.

Mr. Papanek states that at the time that the jury was retiring, he inadvertantly used the name of the witness as Joseph Smith. He states that it is Robert Smith.

The Court: Let the record so show.

FRANK CARUSO, called as witness on behalf of State, sworn, was examined and testified as follows:

440 *Direct Examination by Mr. McGovern.*

My name is Frank Caruso. I live at 2158 West Flournoy, Chicago. I was convicted of the crime of burglary in 1933. I was sent to the penitentiary and I was there for two years and nine months. I know 441 the defendant, Vincent Ciucci, right there. (indicating) On the 4th day of December, 1953, about six o'clock in the evening, I was in my basement. At that time I saw the defendant in this case. When I saw him, my wife called me, she says, "Frank—in the upstairs hall leading to the flight in the basement, she says, "Frank, Vincy wants to see you". My wife, him and my son come down to the basement where I am firing the boiler for my building. Just my wife, my son and him. My wife was picking 442 clothes and he was talking for a second there and he walked towards me; he says, "Frank, can I bor-

row your rifle?". When I say he walked down there and said that, I mean Vincy Ciucci. He came toward me; he said, "Can I borrow your rifle?". I says, "Just a minute, I'm firing the boiler." and making noise when the stoker was going. After I got through firing the boiler I said, "What did you say you want?". He said, "Let me borrow your .22 to go rabbit hunting". I said, "Okay." and I told him, I said, "You coming to play cards tonight?". He said,
443 "No". I said, "Well, Freddy—his brother-in-law—Freddy is coming over". Well, then I got through with the stoker; we started going up. By we, I mean Vincy Ciucci, my wife and my son. We went up to my flat leading from the basement stairway there. I live on the first floor. Then I went to the bedroom to get the rifle. My wife said, "Frank, that is in Joey's bedroom", my son's bedroom, so I went into the bedroom to get the rifle. Then I got in between the dining room and front room and they were standing up and I handed it to him. When I say "to him",
444 I mean to Vincy Ciucci. He said, "Frank, you got some papers right beside me on the radiator." It was some papers; I gave it to him. He took the weapon, a .22 rifle. He wrapped it up in the newspaper. He asked me if I got any bullets and I said, "Gee, I don't know". Then my son said, "Yes, Daddy, you got some in the box". A box of cards and buttons where I had about six or seven. I didn't know, my son told me, "Daddy, you got some in the box". So, my son went to get them and brought it towards me. So then I started picking them out, looking for them in between this box there where spools of thread
445 and buttons—I had some .22 bullets in this box. There

were also spools of thread and buttons and needles and such as that in the box. Well, I picked out about five or six out of the box. As I was picking them out I was handing to him, handing to Vincy, to Vincy Ciucci, and as I was going through the box looking through, I picked a short one—I had a small one, too, also a long one was there and I handed—Oh, it could have been five or six that I handed to him. They were all .22 long. Then I picked out a short one. I said, "This is no good, not a good—won't work automatically". He says, "I know." Then
446 I was looking through again; he said, "That is enough; that is enough". Then I told him, I said, Vincy, when you buy bullets, buy all long—in other words, it won't work automatic." He says, "Yes, I know". So I started talking over my speedway. And then he listens. Then he said, "I know, hi-speed" or something like that he mentioned. I had never loaned that gun to Vincy before December 4th.

(Witness is shown People's Group Exhibit 9 for identification)

(Witness continuing)

This is the rifle. Yes, that is the rifle I gave to Vincent Ciucci on December 4th, 1953. I had known the defendant oh about two, two-and-one-half years, may-
447 be three, before December 4, 1953.

(Mr. McGovern offers the People's Exhibit 9, Group Exhibit 9, for identification, into evidence. Then follows an objection by Mr. Doherty whereupon the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

Mr. Doherty: Now, again, he is being premature, your Honor, in his offer. All that he has done thus

far is show by direct examination that this rifle belonged to Frank Caruso. He has shown no logical connection as to this rifle being used in this particular crime. There is no connection even remotely that this rifle was used in the crime. He has produced no ballistics expert. And I am submitting at this time, your Honor, that it is premature for that reason. And I should be given the opportunity to cross examine this witness, Frank Caruso, as well as given an opportunity to cross examine the ballictics expert that they produce, if they produce, and if they dont produce one, then I submit that under no circumstances would it be admissible, your Honor.

The Court: The court will withhold its ruling until you have been given an opportunity to cross ex-
448 amine the witness now on the stand.

(Whereupon discussion was had off the record, and after which the following proceedings were had within the presence and hearing of the jury, to wit:)

The Court: Let the record show that the court is withholding its ruling at this time.

(Witness continuing)

At my present address I live with my wife and my
449 three children. I am a painter and paper hanger.

Cross Examination by Mr. Doherty.

On December 4, 1953, I had known Vincent Ciucci for about three years. His brother-in-law, Fred Turco, introduced him to me. Fred Turco is the brother of Mike Turco. On December 4th, Fred Turco was not in my home. I did testify that he was going to come over and play cards but he didn't come. Fred

Turco is a pretty good friend of mine. I am friendly with the rest of the Turco family but not as much as with Fred. I knew Vincent Ciucci's son. I live at Flournoy and Leavitt. That is about ten blocks from Albany and Harrison. The defendant's son, Vincent Frank Ciucci has never been to my house. On Friday evening, December 4th, Vincent Ciucci came over to
451 my house to borrow a .22 rifle. His wife was home. At least three people knew that he borrowed the rifle at that time.

Q. He made no secret about borrowing the rifle, did he?

Mr. McGovern: Objection to form.

The Court: He may answer.

The Witness: Yes, sir, he made no secret. I bought another hunting gun because that wasn't much good. The last time I was hunting was about two years ago from December 4th, 1953. I handed him about
452 six bullets. I didn't pay no attention what he did with them.

Q. Yes, and then did he tell you that, well, I have got a few and I will pick up a box tomorrow, is that what he said?

The Witness: He said he will get bullets.

Mr. Doherty: Q. Now, I believe you just testified that you told him that when he did go to buy bullets, to buy Speedway bullets. Then he listended. Then he said, "Oh, I know what you mean, you mean hi-speed", is that right? Is that what you just said?

453 A. Yes.

Q. Now, isn't it a fact, sir, that at that time you told him to be sure to get Super-speed and then he listened and then he said, "I know what you mean, you mean Super". Isn't that right?

A. I am not sure.

(Witness excused)

(The court rules that People's Exhibit 9 for identification may be received in evidence as People's Exhibit 9)

(Objection by Mr. Doherty to this admission is overruled by the court)

(Whereupon Mr. McGovern exhibited People's Exhibit 9 to the jury)

EMMETT FLYNN called as a witness on behalf of People, sworn, was examined and testified as follows:

Direct Examination by Mr. McGovern.

My name is Emmett Flynn. I live at 3711 West Concord Place, Chicago. I am a detective assigned to the Police Department, Crime Laboratory, at 1121 South State Street. That is the crime laboratory of the Police Department of the City of Chicago. On the 7th day of December, 1953, around the hour of noon I had occasion to be present at the premises at 3101 West Harrison. I entered the premises. I entered through a side door on Albany and went into the first bedroom there. I saw a uniformed policeman on duty and I had to identify myself as being from the Crime Laboratory to gain entrance. When I entered, I went to the front bedroom first and then from there, I went into the rear bedroom and assisted the police officers from the Crime Laboratory in their examination of the debris. We just examined the debris in the rear bedroom and I also went into the kitchen from the rear bedroom at that time; it was about 1:30; I entered the kitchen bedroom and I continued my search for a

.22 caliber evidence, firearms evidence, which we were sent there to look for. In the kitchen I looked on the floor and around the premises of the kitchen for a .22
457 caliber cartridge case, for .22 caliber firearms evidence. Approximately at 1:30 I found the .22 caliber cartridge case under one of the wardrobes.

(Witness steps down and over to the plat)

I found one cartridge case about eight inches south of this leg here (indicating a wardrobe in the kitchen of the premises).

(Witness continuing)

This is a wardrobe and the cartridge case I found almost directly under the leg about eight inches south, that would be the northwest leg of the wardrobe in
458 the kitchen. About ten minutes later I found another .22 caliber cartridge case. I found this almost directly under this hot water tank in the kitchen (indicating a hot water tank that is located in the southeast corner).

(Whereupon witness resumes stand)

(People's Exhibits 11 and 12, for identification, are marked)

(Witness is shown People's Exhibit 11 for identification)

(The witness continuing)

459 This is a .22 caliber cartridge case I found at the scene. I found it at the premises at 3101 West Harrison Street. I had my initials in the lip of the cartridge case that I put there. I identified it by my initials which I put on the lip of the cartridge case. I did that in the Crime Laboratory.

(Witness is shown People's Exhibit 12 for identification)

(Witness continuing)

This is also a .22 caliber cartridge case that I found
460 at the scene at 3101 West Harrison Street on December 7, 1953. I wrapped them in my handkerchief and brought them back to the Laboratory and turned them over to Kazmer Simonds, who is one of the firearms technicians, Head of the Crime Laboratory. That was on December 7th. We arrived back at the Laboratory in the neighborhood of 4 o'clock. I identify People's Exhibit 12, for identification, by my initials which appear in the lip of the cartridge case. I placed them there December 7th at the Crime Laboratory. By the lip of the cartridge I mean the inside of the
461 cartridge case, inside the edge.

They substantially in the same condition now as they were at the time I recovered them at 3101 West Harrison Street, except for the marking I put on them at the Laboratory.

Cross Examination by Mr. O'Donnell.

I was first assigned to investigate the premises at 3101 West Harrison about noon time on December 7th. I was assigned to go over there with Adolph Lannis to help in the search for .22 caliber firearms evidence.
462 I arrived in the neighborhood of one o'clock. I found both cartridge cases in the kitchen. As I remember there is a partition that separates the bedroom from the kitchen. As I remember there wasn't too much debris in the kitchen.

Q. Were these cartridge cases wet and muddy?

A. Well, the whole place was damp and it was damp there and dirty. That is all I remember about it.

(Witness continuing)

I didn't happen to smell the cartridge cases at that time. I didn't know when they had been fired. I
463 turned them over to Mr. Simonds about four o'clock. That was on December 7th, the same day. I don't know whether or not they were "Super" cartridges.

(Witness excused)

JOHN STAUFFER called as witness on behalf of People, sworn, was examined and testified as follows:

Direct Examination by Mr. McGovern.

My name is John C. Stauffer. I live at 7913 South
464 Union Avenue, Chicago. I am a technician assigned to the Chicago Police Department Scientific Detection Laboratory and was so assigned on December 7th, 1953. On that date, I went to the premises at 3101 West Harrison Street, Chicago. I entered. I indenti-
465 fied myself to the uniformed police officer. It would probably be around 9:30 A.M. when I arrived there. There were two other men with me, Elmer McAvoy and Ed Hennessy. I went to the back bedroom when I entered the premises and searched in the debris on the floor. I found the discharged .22 caliber cartridge case and the pillow that was found to contain a bullet and some shotgun shells and parts of shotgun shells that had been damaged by fire.

466 (Witness steps down from stand and over to plat)

It would be right along side this chest of drawers here (indicating chest of drawers in the rear bedroom) up against the north partition. I found the pillow on

the floor right about in here (indicating the rear bedroom about the center of the bedroom). There were no beds in there.

(People's Exhibit 13, for identification, was
467 marked and shown to the witness)

That is the discharged .22 caliber cartridge case. It is the same cartridge case I discovered on the premises at 3101 West Harrison Street on the 7th day of December and it is in substantially the same condition as when I recovered it except that my marking is inside the mouth on the edge. By that, I mean my identification mark, S-42.

468 (People's Exhibit 14 is marked for identification, a pillow)

(Jury is recessed, whereupon a discussion was had between court and counsel outside the presence and hearing of the jury, to wit:)

(Mr. Doherty objects to the introduction of this exhibit for the reason that whatever probative value it might have would be greatly overcome by the fact that it is so inflammatory in nature that he believed if it is admitted in evidence and shown to the jury, it would cause sufficient prejudice to require that defense counsel ask the court to withdraw a juror and declare a mistrial. Mr. Doherty further states that there is no reason to introduce a pillow in order to show the bullet and that further, the State has not shown who was present some 55 hours after the fire occurred, and also that there is a showing by the State's testimony adduced from this witness that the
469 beds that were in that room were removed and no showing who removed them or where they took them; and that a pillow was found in the middle of the floor. There is no showing that the pillow might not have

been planted there. It is too remote. To no stretch of the judicial imagination could it be connected as being part of the res gestae.)

Mr. Papanek: This pillow, if the court please, was found there. Mr. Doherty well knows there was a bullet, a .22 caliber bullet, discharged bullet, that was found in there. He is fully aware of that. And it might be inflammatory and it may hurt his client, but that doesn't say it is not admissible. It is a circumstance, your Honor, and a further circumstance that must be properly brought into this evidence in order for the jury to understand what circumstances were
470 attendant to the killing of this family. That is the basis of our offer.

(Mr. Doherty states that Mr. Papanek has only answered half of his argument. He states that the first time that this pillow was introduced into court there was an outburst in the court. A woman became hysterical. Judge Dempsey had to order the jury immediately into the jury room. The orderly proceedings were interrupted for some twenty minutes. Mr. Papanek objects to the last statement as having no bearing as to the admissibility of this particular bit of evidence. Mr. Doherty states that the court must know the inflammatory nature of this and understand it in order to properly rule upon the inflammatory nature of its being presented in front of a jury of twelve
471 laymen.)

Mr. Papanek: Well, the woman jumped up. More frankly, Vincent Ciucci's mother jumped up. Tell the whole story.

(Mr. Doherty reminds the court that the State has not answered the second part of his objection which was as to remoteness. Mr. Papanek states that there is nothing to that objection. The testimony before the court and jury is that there was a police guard.
472 Mr. Papanek: "The evidence is further that there were firemen who were fighting the fire. There is no evidence that there were policemen there and that there were firemen there. And this is now the morning of December 7th. The interior of the premises that was the subject matter of this fire, that had been fought on the morning of the 5th day of December. And there is a pillow that was found in the premises. and the evidence will show that four of these people were shot, bullets through the head. The evidence will further show that two of those were through and through gunshot wounds. And here is a .22 caliber bullet in the pillow.")

The Court: The court rules that the State may proceed.

Mr. Doherty: Well, do we understand by that, that our objection is overruled, your Honor?

The Court: Yes. Your objection—Well, to begin with your objection was based on the theory, as the court recalls it, that the State was offering it, if it should. And the court recalls the situation at the time the objection was made. The State had not made any offering of the pillow in question. It merely
473 sought to identify it. But the court, taking all phases of your objection, will permit the State to proceed to identify it, so that for that portion of your motion is overruled.

(Whereupon the following proceedings were had within the presence and hearing of the jury, to wit:)

(People's Exhibit 14, a pillow, marked for identification)

(Witness is shown People's Exhibit 14 for identification)

The Witness: I recognize that Exhibit. That is the pillow that I found on the rear bedroom floor at 3101 West Harrison Street. I brought that pillow
474 into the Crime Laboratory and back to Claude Hazen, the microanalysist, and he opened the pillow, the seams, and removed the feathers and found the bullet in the feathers. The bullet was handed to Kass Simonds, the firearms identification technician, and I brought the pillow back to the Chemical Lab for Dan Dragel to examine all stains on the pillow. Dan Dragel is the laboratory chemist. That was a little after four o'clock on December 7th, 1953. Claude Hazen handed this bullet to Kass Simonds at the time he took it out of the pillow. This pillow is in the same condition as it was when I found it on Decem-
475 ber 7th except that the seam was not open.

Cross Examination by Mr. Doherty.

Lt. John Ascher is the Director of the Laboratory. Claude Hazen is microanalysist. I know Frank Grady of the Arson Detail and Officer Neville. I first entered the premises on December 7, 1953, at 9:30 in the morning.

Q. That would be fifty-five hours after the fire, is that right?

(Objection by Mr. McGovern is overruled)

476 The Witness: I don't know the exact time of the fire.

(Witness continuing)

Elmer McEvoy and Edward Hennessey were with me. I did not see Officer Neville. I did not know Officer Neville had been there before. I don't know if he was there before. I did not find a shotgun on the premises. We looked oround. We found the shotgun shell, but we weren't interested in the shotgun. When we found the shotgun shell, we looked for a shotgun but did not find one. We looked in the front bedroom and in
477 the kitchen and in the back bedroom. The furniture had been removed from the two bedrooms. That is, the beds had been removed. There was a hi-boy in the back bedroom, a suite of drawers. It was under that that I found the cartridge case. There was a child's wardrobe in the northeast corner in the back bedroom. There were no beds. The condition of the floor at that time was wet and damp and there was clothing and bed clothes on the floor. There was
478 debris. I would say the debris was about three or four inches deep. The cartridge case was not wet and muddy. It was protected by the hi-boy that was underneath right along side the leg. I did not wrap up the cartridge case. I protected it in paper and had it in my pocket. We were in fact searching the premises for six hours. I would say that People's Exhibit 13, that cartridge case, is not a .22 short. I work in the firearms section. Kass Simonds is a firearms identification technician and People's Exhibit 13 was turned over to Kass Simonds. I brought
479 it to Kass Simonds.

(Witness excused)

(Whereupon a discussion was had off the record and after which the following proceedings were had within the presence and the hearing of the jury, to wit:)

480 DANIEL T. DRAGEL called as witness on behalf of State, sworn, was examined and testified as follows:

Direct Examination by Mr. McGovern.

My name is Daniel T. Dragel. I live at 7621 St. Lawrence, Chicago. I am a chemist employed by the City of Chicago, the Chicago Police Scientific Crime Dectection Laboratory. I received my degree in chemistry, University of Illinois, 1932, law degree at De Paul University, 1940, member American Chemical
481 Society and Illinois Bar Association, lectured Northwestern University for five years on general topic of scientific evidence. In my work, I examine many different kinds of physicial exidence, narcotic exhibits, blood exhibits, specimens, sometimes explosives. I have examined upwards of 20,000. I have conducted thousands of examinations with reference to blood and blood stains.

(Witness is shown People's Exhibit 7, for identification)

482 I have seen that Exhibit before. I saw it at the Laboratory on December 6th, 1953, at the time I conducted a preliminary blood test of the stains on the Exhibit and subsequently, on December 14th, I made another blood test of the Exhibit. I discovered that the stains appearing on the Exhibits are blood stains, and further, that the blood stains are of human origin.

(Witness is shown two holes in the Exhibit)

I removed specimens to run my tests.

(Witness is shown People's Exhibit 8, for identification)

(Witness continuing)

483 I saw that Exhibit on December 6th, 1953. I removed some stain portions from the Exhibit and subjected them to a series of chemical and serological tests. I discovered that the stains are blood stains of human origin. I also removed small sections of that Exhibit to conduct my tests.

(Witness is shown People's Exhibit 6 for identification)

(Witness continuing)

I saw this Exhibit at the Crime Laboratory on December 6th, 1953. I removed portions to run some blood tests upon. I discovered that the stains appearing on the Exhibit are blood stains of human origin.

(Witness is shown People's Exhibit 14 for identification)

I saw this Exhibit, the pillow, at the Crime Labora-
485 tory on December 7, 1953. I removed a portion of the stained Exhibit upon which to conduct some blood tests. I did conduct blood tests. I discovered that the stains on the Exhibit are blood stains of human origin.

Cross Examination by Mr. Doherty.

Q. Mr. Dragel, what is a paraffin test, if you know?

A. Paraffin test?

Mr. McGovern: Object as beyond scope of direct examination.

Mr. Doherty: Your Honor, this man has been qualified as an expert.

The Court: He may answer.

486 The Witness: The paraffin test, or the so-called paraffin test, is a test whereby some people are able to determine whether or not a person fired a weapon or handled a recently fired weapon. I say so-called
487 paraffin test because the paraffin test is not reliable.

(Witness continuing)

I did not ascertain from this test of these various
488 exhibits whether that blood was male or female. Generally speaking there are four blood groups or types. I didn't type the blood on any of the exhibits.

(Witness excused)

(Whereupon court was adjourned until ten o'clock Monday, January 10, 1955)

Monday, January 10, 1955
Morning session
At ten o'clock A.M.

Court met pursuant to adjournment.

Parties present: The same

(Whereupon the following proceedings were had
490 outside the presence and hearing of the jury, to wit:)

491 WILLIAM MARZULLO, called as a witness on behalf of the People, sworn, examined, and testified as follows:

Direct Examination by Mr. Papanek.

My name is William Marzullo. I live at 834 South
492 Oakley Boulevard. I am a funeral director. The name of funeral parlor is Kringas and Marzullo. I have been a funeral director about ten years. I knew Anna Ciucci during her lifetime. I knew Vincent Ciucci and Angeline Ciucci during their lifetime. I went to the Cook County Morgue in the City of Chicago on December 5th, 1953, about 11 or 11:30 A.M. I went down to the basement of the Morgue.
493 There I viewed four bodies. Frank Ciucci was with me at that time. No one was with me from the Coroner's office. By Frank Ciucci I am referring to the father of the defendant. I recognized the bodies that were lying in the County Morgue. I recognized Anna Ciucci, Virginia and Angeline and Vincent. That is the mother and the three children. I am an embalmer.
494 I handled the funeral of Anna Ciucci and the three children. I did not do the embalming. I called my embalmer, Alex Carbanera, to attend to the embalming of the bodies after I identified them at the County Morgue. I returned to the County Morgue later that evening. Alex Carbanera and Dr. Kearns were there. It was about 6 or 6:30 P.M. The bodies were brought to the undertaking parlor from the County Morgue the following day, which would be Sunday, 5:30 P.M., December 6, 1953.

Cross Examination by Mr. O'Donnell.

495 I removed the bodies from the Morgue on December 6th. That was about 5:30 P.M., and I took them directly to my establishment. That was Sunday. No one examined the bodies on Sunday. The bodies were examined Monday morning by Dr. Kearns. He came to examine the bodies at 6 A.M. Not the bodies;
496 one body. The bodies were embalmed Saturday. Dr. Kearns examined this one body after it had been embalmed. Dr. Kearns was there at my establishment
497 on December 7th about forty-five minutes to an hour.

Redirect Examination by Mr. Papanek.

Q. What one body was that that he examined?

Mr. Doherty: Objected to as immaterial

The Court: He may answer.

Mr. Papanek: In the place of business of your undertaking parlor?

A. Anna Ciucci.

(Witness excused.)

ALEX CARBANERA, called as a witness on behalf of People, sworn, was examined, and testified as follows:

Direct Examination by Mr. Papanek.

498 My name is Alex Carbanera. I live at 1521 West Ohio Street. I am an embalmer. I am a member of a group known as free lance embalmers serving a number of undertakers, going from parlor to parlor. In the month of December, 1953, one of the funeral parlors for which I perform embalming services was known as Kringas and Marzullo.

Q. Now directing your attention to December 5, 1953, did you receive a call from William Marzullo?

Mr. Doherty: Objected to.

The witness: A. Yes.

499 Mr. Doherty: That is leading and suggestive.

The Court: He may answer.

A. Yes, I did.

(The witness continuing:)

I went to the County Morgue on December 5th around noontime Saturday. I went downstairs into the basement of the Morgue where the four bodies were lying. I will describe them as to maturity and as to sex. There was one adult and three children. The adult was a female. No one identified those bodies to me at that time. I took a good look at them and went upstairs to the phone and called up Kringas

500 and Marzullo Funeral Home and suggested to them to have the caskets down to the County Morgue. I suggested I would eliminate any odors and —.

Mr. Doherty: Objection. I object on the grounds that this is a conversation held outside the presence of the defendant.

The Court: Objection sustained.

(The witness continuing:)

I decided to prepare the bodies there at the County Morgue. We decided that I would come back when the caskets were down there to the County Morgue.

501 I examined the bodies prior to making the call. I looked at the bodies.

Q. And will you describe the condition of the bodies with reference to the three children and the female adult, please?

Mr. Doherty: Objected to. I would like to be heard.

The Court: Let's step into chambers.

(Whereupon the following proceedings were had in chambers outside the presence and hearing of jury, to wit:)

The Court: What is your objection for the record, please?

Mr. Doherty: May it please your Honor at this time, we are again renewing our objection to the reference to the other bodies other than the body which forms the basis of this indictment.

It is our contention that the description of the bodies at this time would be of such inflammatory and prejudicial nature that it would far outweigh any probative value whatsoever in this case. They are dead, that's all there is to it. It's not what they
502 look like. It is not a necessary element in establishing the corpus delicti in this case. It is designed for one purpose alone; that is to inflame the minds of the jurors, and for that reason, we are again objecting to it.

Mr. Papanek: May I point this out, Judge. I would like to ask a simple question as to why he was going to embalm them. There is nothing in this record with this witness to show that these were the four people who were taken from the premises, Judge.

The only circumstance that he is able to testify to, up to this stage, is the fact that there was a woman and three kids. That's all.

Now, when I ask him the question, "Why did you decide to prepare the bodies there?", there was an objection and your Honor sustained it.

Mr. Doherty: Properly so.

Mr. Papanek: I am not quarrelling with that. I am not quarrelling with that at all.

Now, the man testified that he saw the bodies. Now I want by testimony to show that these were the bodies that were burned, and what subsequently developed so that, that will tie up the four bodies to
503 3101 West Harrison and I submit that is a logical and necessary step introducing our evidence. There is nothing inflammatory about it.

The Court: Go ahead.

Mr. Doherty: I don't think that Counsel would purposely mislead this court. The question "Why" was not because the bodies were burned, and if that witness would have been permitted to testify he would have testified that they stunk so bad that they didn't want them in the chapel out there, to stink up the chapel. That is certainly inflammatory. That was the reason for our objection.

These bodies were burned. It is not necessary that he go into the details, a detailed description of these bodies, to inflame the minds of these jurors.

Mr. Papanek: Nothing to show they were burned. Why do you say that? There is nothing to show that the four bodies that he is about to testify to were burned and that is the basis of my question. I again repeat that.

Mr. Doherty: Your Honor, he has established, or attempted to establish the corpus delicti by one
504 William Marzullo, by asking William Marzullo, "Did you know Anna Ciucci in her lifetime?" Isn't that right? Then he asked, "Did you know the children of Anna Ciucci in their lifetime?" And he said, "Yes." And they were in front of him on the trays and they were dead.

Now they have established the corpus delicti in all of these indictments.

Mr. Papanek: Carbanera wasn't there. Marzullo told you Frank Ciucci was there when he was there.

Mr. Doherty: May it please the Court. Isn't it a fact, that he did, in fact, establish the corpus delicti with William Marzullo. Either he did or he didn't establish the corpus delicti. He is doing this for one reason alone.

Mr. Papanek: Well, Judge—

The Court: Let him finish. Go ahead Mr. Doherty.

Mr. Doherty: That is perfectly all right.

Mr. Papanek: I am not putting this witness on to establish any corpus delicti. I say frankly, but—

Mr. Doherty: What is the purpose of it then Mr. Papanek?

Mr. Papanek: From here on your Honor isn't familiar with the evidence. I am going to tell you as counsel knows what the balance of the evidence is.
505 There are now four victims that were burned and he will testify that he found the bullet hole in the first of the victims, which is the boy, the subject matter of our inquiry in this indictment.

Then he will testify as to being present during the performing of the post-mortem by Dr. Kearns. He assisted him. He was present and he knows all of this.

Now I submit the right to show first, when no one identified these bodies to him as being the Ciucci children and Mrs. Ciucci that I have the right to show that they were a woman, who was badly burned,

and three children who were badly burned, to connect it up with the four people that this evidence is concerned with. That's all. Is there anything improper in that? That certainly is the proper way and a necessary step.

The Court: Mr. Reporter, go back and read the last question.

(Question was read by reporter as follows: "And will you describe the condition of the bodies with reference to the three children and the
506 female adult, please?")

The Court: The court rules that he may give a description of the bodies as he saw them without going into any of the extraneous details.

Mr. Papanek: Then would your Honor say to this witness you may answer as to what you actually saw the physical appearance, and nothing more.

The Court: You ask him that.

Mr. Doherty: At this time your Honor we are again renewing our motion that a juror be withdrawn and a mistrial be declared.

The Court: The motion is denied.

Mr. Doherty: Exception if the court please.

(Whereupon, the following proceedings were had in the courtroom in the presence and hearing of the jury, to wit:)

Mr. Papanek: Mr. Reporter, will you read the question to the witness please.

(Question read by the reporter as follows: "And will you describe the condition of the bodies with reference to the three children and the female adult, please?")

Mr. Papanek: Q. I might add, Mr. Carbanera, that I am talking about what you saw physically;
507 what you saw, in other words?

Mr. Doherty: Object to the form of the question if the court please.

The Court: It may stand.

The Witness: A. Well, Mrs. Ciucci, the adult, was charred, very badly burned. The smallest child I believe that was the four year old, she was very well burned up.

Now the seven year old girl she was burned, but in spots, and the boy was burned mostly about the body and just a matted mass of blood and hair was just matted around the head.

Mr. Papanek: All right.

(The witness continuing)

After that I made my phone call. I returned to the morgue that evening about five o'clock. I brought all of my equipment down to the basement of the morgue. All of my paraphernalia in fluids and chemicals
508 and I commenced to prepare the smallest child, and I prepared her by placing her in a plastic pouch and covered her with what we call a hardening compound, chemical and saturated—

The Court: Mr. Papanek let me interrupt. Step into chambers please.

(Whereupon the following proceedings were had in chambers outside the presence of the jury, to wit:)

The Court: The court would like to hear from the state as to the necessity for the description as to what steps were taken by the embalmer with reference to

the small child, about which the embalmer is now testifying. . .

Mr. Papanek: Judge may I indicate this: I asked the man what did you do then and the man is describing what he has done. I heard no objection. I can't stop the witness.

The Court: Well, the court feels that the witness should be stopped at this point. The court believes that he should now proceed to tell what he did with the corpse of the male child.

509 Mr. Papanek: That is to the details of embalming?

The Court: As to what he did with the male child, yes.

Mr. Papanek: Your Honor I might say while we are here I want to indicate this Judge; after Dr. Kearns comes in—I am telling your Honor what our evidence will show—after Dr. Kearns comes, he is present when all four bodies are posted and there is a discovery of a bullet wound of entrance on each of the four, and I am intending in the matter of our proof, to show that fact with each of the four.

With reference to this phase of it your Honor indicated, and I have no quarrel with it that it would have no probative value in this case, but I say again Judge, that later, as this man testifies it will develop that he finds bullet holes and he is present when the posting is performed.

The Court: Well I think he should be restricted to tell what he did, and not give the details as to the actual physical handling of the bodies; as to what he did with the male child at this point.

Mr. Papanek: Yes I have no quarrel with that and I will take your Honor's suggestion and I will put
510 the question squarely to him about the boy.

The Court: All right.

(Whereupon the following proceedings were had in the courtroom, within the presence and hearing of the jury, to wit:)

Mr. Papanek: Q. Mr. Carbanera, did you, sir have occasion to perform or do anything on the body of the male child in the Cook County Morgue on that afternoon?

A. The male child?

Q. Yes Sir. Did you?

A. After I got through sealing the casket—

Q. Did you?

A. Yes Sir.

Q. Now will you tell the court and this jury please, exactly what transpired from the time you went to the male child, please?

Mr. Doherty: Excuse me. Was that seeing or sealing the casket?

The Witness: Sealing.

Mr. Doherty: Excuse me for interrupting.

The Witness: Yes. I went to the tray where the
511 large boy was laying and I noticed he was lying in a pool of blood.

Mr. Papanek: Q. Where was the pool of blood, sir?

A. Mostly in back of the neck and in back of the shoulders.

Q. What happened then?

A. So I thought it very funny for a burned body to be bloody.

Mr. Doherty: Objecting to what he thought if the court please.

The Court: The objection is sustained.

Mr. Doherty: Move that be stricken and the jury instructed to disregard it please.

The Court: It may be stricken and the jury instructed to disregard the last statement.

Mr. Papanek: What did you see or do then please?

A. I examined the head very closely and ran my finger through the hair and discovered a hole in the side of the head.

Q. What happened then?

A. I called upstairs to the office at the County Morgue and I told Mr. Kringas what I had—

Mr. Doherty: Object to what he told if the court please.

The Court: The objection is sustained.

512 Mr. Papanek: What happened after you talked to Mr. Kringas?

A. I waited until he went upstairs and came back down and told me to go ahead and keep on working.

Q. All right. Now, Mr. Carbanera, did you do anything with the body of the male child, please?

A. No sir, I left him.

Q. Now, following that did any doctor appear, any coroner's physician?

Mr. Doherty: Objected to as being leading and suggestive if the court please.

The Court: He may answer.

The Witness: A. The doctor came after I had—

Mr. Papanek: What time was that please?

A. Approximately seven o'clock in the evening on the 5th day of December 1953.

(Witness continuing)

I talked to Dr. Kearns when he came.

Q. And after you talked with him, did you or Dr. Kearns, either or both of you, do anything with refer-
513 ence to any or all of those bodies?

Mr. Doherty: Object to the form of the question.

The Witness: A. Yes, sir.

The Court: He may answer.

Mr. Papanek: Q. What was the first thing that was done after you talked with Dr. Kearns with reference to any one or all of those bodies, please?

A. We brought the body up into the autopsy room and performed an autopsy on the head.

Q. Were you present when the autopsy was performed?

A. Yes, sir.

Q. And what if anything did you see there, please?

A. We found that a hole had penetrated through the head, through the brain.

Q. And what was the—Was there a point of entrance and a point of exit?

A. Yes, sir.

Q. And following that what, if anything, was done?

A. Then I went downstairs to unseal the caskets and bring up the next child, and that was Virginia.

Q. What happened then?

A. Well we opened the head up on that one.

Mr. Doherty: Objected to.

The Court: Step into chambers.

514 (Whereupon the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

The Court: The court would like to hear from the state as to the testimony that the witness is now about

to give regarding the examination of the bodies of the others.

Mr. Papanek: Judge, I have indicated to your Honor when we were here previously, and before we got off of the first subject, I pointed out to your Honor that this witness—when Dr. Kearns came and talked to him and after he talked to him, that he assisted and observed the posting of the bodies; that there was present in each of the four bodies a bullet wound in the head, in each of them; that in two of them, they were through and through bullet wounds and the evidence will show they were bullet wounds of a small caliber firearms, Judge; that in the other two there was found a mutilated, long rifle bullet of .22 caliber, and there was found a fragment, a lead fragment of a bullet, and the point of entrance was that of being made by a small caliber of bullet.

This man was there present and he saw this.

515 The Court: Well the court is not concerned so much with what he saw as to the admissibility of the other details. That is the point.

Mr. Papanek: That is the Murphy case again Judge.

The Court: Do you have that Murphy case available, Mr. Papanek?

Mr. Papanek: 276, Judge.

The Court: This is off of the record.

(Discussion was had between court and counsel off the record after which the following proceedings were had outside presence and hearing of jury, to wit:)

The Court: Let the record show that counsel for the state is citing a case.

Mr. Papanek: People versus Murphy, 276 Illinois and it reads from the bottom of page 321 and the upper paragraph of page 322.

The Court: Mr. Doherty, do you have any authority to the contrary as stated by this case, cited by the state?

Mr. Doherty: I have no available authority at this time, your Honor.

The Court: All right. The objection will be over-
516 ruled. You may proceed.

Mr. Doherty: I have some other matter now, your Honor. Based upon the authority that has been cited to your Honor and based upon your Honor's ruling at this time, I again renew my motion for dismissal on the ground of former jeopardy.

The Court: Motion denied.

Mr. Doherty: Exception. At this time we again renew our motion to consolidate the instant indictment, namely, 54-839 with a pending indictment, namely, 54-840.

The Court: Motion denied.

Mr. Doherty: Exception.

Mr. Papanek: May the record show the state definitely objected to that.

(Thereupon following proceedings were had in presence and hearing of jury, to wit:)

(Witness continuing)

517 After that the similar holes were the same in the body, like the first body, through and through the brain, so I left him up in the posting room and went downstairs to the basement of the morgue to bring up the smallest child. I brought her up into the autopsy room and Dr. Kearns started the posting. I left him as soon as he made the incision. I went down

to the basement of the morgue to bring up the adult body. I was not present at any time that Dr. Kearns had actually opened the skull of this small child. When
518 I brought the adult up as I got off the elevator in the posting room, he handed me a bullet that was all mutilated and smashed and told me he had recovered it from—

Mr. Doherty: Objected to.

The Court: Objection sustained.

Mr. Papanek: Q. What happened after you saw this bullet, sir?

Mr. Doherty: Objected to.

The Court: Objection sustained.

(Witness continuing)

I brought the adult body into the posting room. I was present when we posted the adult body.

Q. And what was done please?

A. We posted the head on the adult and we found—

Mr. Doherty: Objected to.

519 Mr. Papanek: Q. What did you see or do?

A. I saw Dr. Kearns find a piece of bullet.

Mr. Doherty: Objected to as a characterization of it being a bullet.

The Court: Objection sustained.

(Witness continuing)

I saw a piece of metal. It came from the brain of the adult that I had last brought up there.

Q. And did you see anything else with reference to the external portion of the head of that adult?

A. I did. The hole.

(Witness continuing)

There was a hole above the bridge of the nose. I then left the posting room to bring the bodies back down into the basement of the morgue.

520 *Cross Examination by Mr. O'Donnell.*

I stated that I went to the morgue on December 5th about noon. I came back later that same day and commenced the preparation of the bodies. I started with the smallest child by placing her in a plastic pouch which we use on the bad cases. I placed the child in the plastic pouch and covered her up with what we call a hardening compound. It is a chemical used for preserving bodies and I sprinkled her with a liquid embalming chemical and I sealed the pouch, sealed the casket. The liquid I used is a cavity fluid.
521 I know what an anti-coagulant is. It is something to either prevent blood clots or—. The cavity fluid I used in the preparation is not an anti-coagulant. I completed the preparation of the bodies approximately at 9:00 o'clock. I did not know Vincent Frank Ciucci before December 5th, 1953. When I got to the morgue, I did not know who these people were. I prepared the body of Vincent Frank Ciucci, the male child, the same as I did all the others. That was after Dr. Kearns came. I sprinkled this hardening compound on Vincent Frank Ciucci after I brought him down from the posting room. I did nothing to him before that. On ordinary cases, we use this cavity fluid for just what it calls for, preserving and disinfecting. It is injected arterially and we use it for a superficial preserving to eliminate any odors of any bacteria.

(Witness excused)

(Whereupon short recess taken after which following proceedings were had within presence and hearing of the jury, to wit:)

KASMIR SIMONS called as witness on behalf of people, sworn, was examined and testified as follows:

Direct Examination by Mr. McGovern.

My name is Kasmir Simons. My address is 10960 Church Street, Chicago, Illinois. I am a member of the Chicago Police Department assigned to the Chicago
524 Police Scientific Crime Detection Laboratories in the Fire-arms Identification Section. I attended Morgan Park High School. I have been on the Police Department since July 3, 1929. 25 years. I studied firearms as a hobby for more than 30 years. I have done considerable handling of numerous calibers and have conducted experiments with various components and loading methods necessary to produce accuracy in these loads. I have attended the Small Arms Firing School, Camp Perry, Ohio under the supervision of the United States Army and I hold certificates as qualified instructor of small arms. I have been an active competitor in many revolver, shot-gun, and rifle matches and I hold the national record, indoor, small fire center fire record. I have been range officer for the Police Training Division of the Chicago Police Department and I have given instructions in use of revolver, shot-gun, and sub-machinegun. I have
525 read and have in my personal library such standard literature on firearms and firearms identification as "The Determination of Auto-Loading Pistols From The Examination of Bullets and Cases." This was written by Dr. Metzger, Dr. Hess, and Inspector Hashlager, Stuttgart, Germany. There is an atlas along with this work. "Firearms Identification" by Gunther and Gunther. "Identification of Firearms and Forensic

Ballistics." by Major Gerald Burrad. "Firearms Investigation and Evidence" by J. S. Hatcher. Then two volumes of Munhall and White; one is the American-British Cartridge, and the other one is the Metric Cartridge. "American Gunmakers" by Gluckman and Satterlee. "The Bullet's Flight" by Dr. Mann. I have
526 observed the manufacture of arms at the Western Cartridge Company of East Alton, Illinois, Remington Cartridge Company, Bridgeport, Connecticut, The Federal Cartridge Company, of Minneapolis, Minnesota. I have observed the manufacture of fire arms and gun barrels at the Harrington and Richardson Revolver Company, Worchester, Massachusetts. Holt Firearms, Hartford, Connecticut, Smith and Wesson at Springfield, Massachusetts. Winchester Repeating Arms in High Guard in New Haven, Connecticut.

My duties at the Chicago Police Scientific Crime Detection Laboratory are to receive and make detailed examination of firearms evidence, such as various weapons, bullets and cartridges, cartridge cases that are submitted by the Department and I am required to submit a report of my findings. When I examine a weapon, I examine it to determine its caliber, its condition, and its class and individual characteristics. And by the use of the comparison microscope technique, I determine whether or not these weapons submitted
527 are involved. I also do certain research work in the field of various arms identification from time to time as needed. I have been doing that type of work since 1947. I use a Spencer microscope which consists of two metallurgical microscopes. There are two microscopes placed side by side and they are connected with a bridge, having one eye piece. These microscopes are

also equipped with the proper stages for handling bullets and cartridge cases and are equipped with proper illumination. When you look through this instrument in the left eye, half of the eye piece, you see the object placed under the left microscope and in the right hand of the eye piece you see the object placed under the right microscope. In examining two bullets, a bullet is attached to each microscope with beeswax. These bullets then can be rotated. They can be moved from right to left or left to right and they
528 can be moved towards the operator or away from the operator and can be moved up and down for focus. The cartridge cases are mounted in diaphrams and these cases can be rotated clock-wise or counter-clock-wise, right or left and away from the operator and towards the operator. In examining bullets, a bullet is placed under each microscope and one bullet is rotated until a point of similarity is observed and both bullets are rotated simultaneously and the fine marks or striations are studied to determine whether or not they coincide from one bullet to the other at the point where the field is split. In examination of cartridge cases, the technique is similar except that firing pin indentations and breech markings on the head of the cartridge case are studied. I have studied more than 4,000 weapons in the laboratory. I have made more than 10,000 comparison examinations,

(Witness shown People's Exhibit 9.)

(Witness continuing.)

I have examined that weapon before. I examined it on December 6, 1953 in the crime laboratory of the Chicago Police Department. When I received this
530 weapon, it was in these two parts, that is, it was dis-

mantled. The mechanism was dismantled from the stock by this four-way screw. (indicating) I examined the weapon and found it in good mechanical operating condition. I examined the barrel and I found it had not been cleaned since last fired, and it also rifled with six lands and grooves, right hand twist. This is a .22 rim fire calibre and it is manufactured by the Stevens Savage Arms Corporation known as model 87A. This weapon can fire either the .22 short or .22 long or .22 long riflle cartridge. When fully charged, it holds 15 long rifle cartridges, or 17 longs, or 21 shorts. I will assemble the rifle and indicate for the jury and Court the manner in which this particular weapon can be operated. This screw is tightened up. (indicating)
531 This weapon can be fired in three different ways. First, is single shot. In operating it as a single shot, the bolt it drawn to the rear and a cartridge is inserted in chamber and bolt is permitted to return forward, under spring tension, and this button here is pushed in, and safety is taken off and trigger is pulled. Then, manually again, bolt is drawn to rear and cartridge case then is extracted and ejected from port on the right hand side.

In operating it as a repeater, magazine is charged with cartridges, bolt is drawn to rear and permitted to come forward. When it does, it loads a cartridge into chamber. This button is pushed down and trigger is pulled. Bullet is fired and cartridge case is then extracted and ejected, but manually.

In operating it as an auto-loading weapon, rifle operates with .22 long rifle cartridges only. Magazine is charged, bolt is then drawn to rear and permitted to go forward and as it goes forward, it strips a cart-

ridge from magazine and sets bullet in the chamber and then the claw-like extractor snaps over the rim of
532 the cartridge case, but the button is not pushed at this time. Then when the trigger is pulled, then firing pin is released and cartridge then explodes. At that moment, the cartridge case is forced violently to the rear against the breech block and then the breech block moves back and the claw-like extractor pulls cartridge case from the chamber. Then as it continues in its rearward position, the face of the cartridge case then strikes the extractor which forces the cartridge case and extracts and ejects it from the port, but the trigger must be pulled for each shot.

533 I also fired two test shots from People's Exhibit 9. I fired it on December 6th, 1953. I took two .22 long rifle cartridges of Federal manufacture and loaded them both into the magazine and I fired one bullet into the bullet recovery box. I then recovered that bullet and I marked it by my case number, test number one, and then I recovered the cartridge case, and—that is, my test number one. I did likewise with test number two. I took these two test bullets and two test cartridges and put them into a pillbox. A bullet recovery box is a box designed for the recovery of bullets. It is approximately fourteen by fourteen by about six feet long. It is covered. It can be raised and lowered and it is filled with cotton or waste mate-
534 rial into which these bullets are fired and recovered.

(People's Exhibit 15, 16, 17, small boxes were marked for identification.)

(Witness is shown People's Exhibit 15 for identification.)

535 (Witness continuing.)

I examined that Exhibit on December 6th, 1953. I first marked it for identification with the letter A, then I weighed it and compared with known specimens that we have in the laboratory, and then I examined it under the microscope. It weighed fourteen-and-three-quarters grains. It is my opinion that this Exhibit is the base portion of a small caliber bullet.

(Witness is shown People's Exhibit 16 for identification.)

536 (Witness continuing.)

I first marked it for identification with the letter B, and then weighed it and compared it with known specimens, and then examined it under the microscope. Its weight was thirty-eight-and-three-eighths grains. It is my opinion that this Exhibit is a .22 long rifle, rim fired, lead bullet that was fired from a weapon rifled with six lands and grooves, right hand twist.

537 (Witness shown People's Exhibit 17 for identification.)

I first saw this on December 7, 1953 in the crime laboratory. Mr. Hazen, Lieutenant John Asher, John Stauffer, Joe Price, and myself were present. I received this Exhibit on December 7th, 1953 about 3:30 p.m. from Mr. Hazen, our microanalyst. It was
538 handed to me by Mr. Hazen of the crime laboratory staff. I saw him recover that Exhibit.

Q. And where did he recover the Exhibit from, sir?

Mr. Doherty: Objection as being immaterial.

The Court: He may answer.

The Witness: A. Well, with a pair of scissors he slit open the pillow he had and after feeling around, handed me this Exhibit.

(People's Exhibit 14 is shown to the witness.)

(Witness continuing.)

That is the pillow from which Mr. Hazen removed the Exhibit, People's Exhibit 17. I took this Exhibit
539 and I marked it with the letter "C", then I weighed it and compared it with specimens and then I examined it under the microscope and I put it in this little pill-box. It weighed thirty-six grains. It is my opinion that People's Exhibit 17 is a .22 long rifle, lead bullet that was fired from a weapon with six lands and
540 grooves, right hand twist. The land is the portion of the gun barrel that separates the grooves. If you have six lands, you have six grooves in a barrel. These grooves, during the manufacture of the gun barrel, are cut into this barrel and they are either right or left hand, and the land is referred to as the raised portion separating the grooves. I have with me the test shots that I referred to previously.

(People's Group Exhibit 18, a small box, was marked for identification.)

(Witness is shown People's Exhibit 11 for identification.)

541 Mr. McGovern: Purporting to be a .22 caliber cartridge case. I now show you People's Exhibit 12 for identification, purporting to be a.22 caliber cartridge case.

(Witness continuing.)

I have seen that Exhibit before.

Mr. McGovern: I show you now People's Exhibit 13 for identification, also purporting to be a .22 caliber cartridge case, and I ask you to look at that Exhibit.

(Witness continuing.)

542 I saw those Exhibits in the month of December 1953, December 7th, 1953 at the Chicago Crime

Detection Laboratory. I determined the caliber and the make of manufacture and then I marked them for identification.

Mr. McGovern: For the purpose of the record, you are now referring to the People's Exhibits numbers 11, 12, and 13, purporting to be cartridge cases.

(Witness continuing.)

Q. Did you determine the type of cartridge case that is, sir?

A. It is a discharged cartridge case. It could be either a .22 long or long rifle caliber. In both these sizes—

Mr. Doherty: Objected to.

543 The Court: What is the basis of the objection?

Mr. Doherty: That the latter part is not responsive.

The Court: It may go out.

(Witness continuing.)

I determined the make up of the cartridge cases. They are manufactured by the Federal Cartridge Company. People's Exhibits 11, 12, and 13 are .22 caliber, rim fired, cartridge cases manufactured by the Federal Cartridge Company.

Q. Did you determine whether they were long or long rifle cartridge cases?

544 A. Being discharged, I wasn't able to.

Mr. Doherty: Objected to.

The Court: He may answer.

Mr. Doherty: Object to the form of the answer.

The Court: It may stand.

Mr. Doherty: It calls for a yes or no answer.

The Court: It may stand.

(Witness continuing.)

With respect to People's Exhibit 11 for identification, a .22 caliber cartridge case, I first took my two discharged cartridge cases which were my test shots, People's Exhibit 18, for identification, and placed one under each microscope and made a comparison examination between these two test cartridge cases then I removed one and replaced it with People's Exhibit
545 11, which was a discharged cartridge case, and I made a comparison examination. It is my opinion that People's Exhibit 11 which is a discharged cartridge case, was discharged in People's Exhibit 9, the Stevens Savage, Model 87A rifle.

I also examined People's Exhibit 12 for identification, which is also a .22 caliber cartridge case. I then replaced People's Exhibit 11 from under the microscope, and I replaced it with People's Exhibit 12, which is a discharged cartridge case and I made a
546 comparison examination. As a result of my examinatio of People's Exhibit 12, with my test cartridge cases, People's Exhibit 18, I have an opinion as to what weapon fired People's Exhibit 12 for identification. It is my opinion that People's Exhibit 12 which is a discharged cartridge case was discharged in People's Exhibit 9, the Stevens Savage Model 87A rifle. I also conducted an examination between People's Exhibit 13, the discharged .22 caliber cartridge case. I then, continuing, removed People's Exhibit 12 and I replaced it with People's Exhibit 13, a discharged
547 cartridge case, and I made a comparison examination. It is my opinion that People's Exhibit 13 which is a discharged cartridge case was discharged in People's Exhibit 9, the Stevens Savage, Model 87A rifle.

Q. And upon what do you base that opinion, Mr. Simons?

Mr. Doherty: Objected to as being immaterial.

The Court: He may answer.

Mr. Doherty: Qualify him as an expert.

The Court: He may answer.

The Witness: I base that on the similarities of class and individual characteristics.

Mr. McGovern: Q. Now, Mr. Simons, when you spoke of comparing People's Exhibits 12 and 13 for identification under the microsope with your test shots,
548 are you referring to the test cartridge cases which are contained in People's Exhibit 18 for identification?

A. Yes, this was—

Mr. Doherty: Object now.

Mr. McGovern: You may cross examine.

Cross Examination by Mr. Doherty.

Q. Now, Mr. Simons, the first thing you did with People's Exhibit 9, the .22 rifle, was to examine it and determine whether or not it was in good mechanical condition?

A. I assembled the rifle and I examined it as to its operating condition.

(Witness continuing.)

It was in good mechanical condition. It had six lands and six grooves, right hand twist. The next thing I did was to fire two bullets into the bullet
549 recovery box. The bullet recovery box is about similar to this table top. It is about six feet long, fourteen by fourteen, containing waste and cotton. The idea of the waste and cotton is to keep from damaging the bullet. Claude Hazen did not examine the rifle before

I did. I did not scrape the inside of the barrel to get microscopic particles.

Q. Then I take it, sir, that no microscopic examination was made of any particles that might have been on the inside of the barrel. Is that right?

Mr. Papanek: Object to the form of the question.

The Court: He may answer.

550 The Witness: A. No, I made no—

Mr. Doherty: Microanalysis?

The Witness: Microscopic examination of the interior of the barrel. I cannot tell when People's Exhibit 9, the .22 caliber rifle, was last fired prior to the firing of the test shots. The firing of the test shots may cause lead fouling to adhere to the inside of the barrel.

Q. With that thought in mind, sir, could any other ballistic expert tell us when that rifle was last fired prior to the firing of the test shots?

551 Mr. Papanek: Object to the form of the inquiry.

Mr. Doherty: Now Judge, I am talking to an expert, I would like—

The Court: Let's step into chambers.

(Whereupon the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

Mr. Doherty: They are doing this just to interrupt me, if the Court please. They know full well this man knows his business.

(Question read by the reporter, as follows: "With that thought in mind, sir, could any other ballistics expert tell us when that rifle was last fired prior to the firing of the test shots?")

The Court: What is the basis of your objection?

Mr. Papanek: "With that thought in mind" What does that mean? We object to the form of the question.

552 Mr. Doherty: I just got through asking the question about lead fouling adhering to the inside of the barrel.

Mr. Papanek: This man said it may. I'm objecting to the form of this question.

The Court: On what basis?

Mr. McGovern: Would any other ballistics expert be able to tell. Certainly I don't think it is a proper question. I don't believe this witness knows every other ballistic expert. He doesn't know what opinion every other ballistic expert would give or say.

The Court: This is off the record.

(Discussion was had between Court and counsel off the record, after which the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

The Court: Let the record show the question is withdrawn.

Mr. Doherty: I am going to ask him all over again as soon as I get done asking him that question.

(Whereupon following proceedings were had
553 within presence and hearing of jury, to wit:)

The Court: Let the record show the question was withdrawn and leave is given to counsel to put another question.

Mr. Doherty: Mr. Simons, the lead fouling adhering to the side of the barrel after the test shots were fired, is what precludes you from ascertaining when it was last fired, prior to the firing of the shots. Isn't that right, sir?

The Court: Read the question back.

(Question read by reporter.)

Mr. Doherty: Do you understand the question, Mr. Simons?

A. No sir.

Mr. Doherty: I will rephrase it. Q. When any shot is fired through a rifle, a certain amount of lead
554 fouling adheres to the inside of the barrel, isn't that right?

A. You could or could not have some leading.

Q. Yes?

A. That may occur and then again it may not occur. It would depend a great deal on the bullet, sir, the condition of the barrel, and so forth.

Q. Now there would also be particles from the explosion of the cartridge on the inside of the barrel, isn't that right, sir?

A. There would be some powder residue.

Q. Yes sir.

A. That would be along the barrel.

Q. Now sir, isn't it a fact that, that is wh. . precludes you from determining when the rifle was last fired, prior to the firing of the test shots?

A. I could not determine when People's Exhibit 9 was discharged prior to my firing my test shots.

Q. Now, at this time, after you fired the test shots, it precluded the possibility of anyone telling when that gun was last fired, prior to firing of the test shots, isn't that right?

Mr. Papanek: Object to the form of the question.
555 The Court: Read the question.

(Question read by reporter.)

The Court: Do you understand the question, Mr. Witness?

The Witness: I don't think I quite understand what counsel means.

The Court: Read it again.

(Question read by reporter.)

The Witness: I don't know.

Mr. Doherty: You keep abreast of the modern developments in the science of ballistics, is that right sir?

556 A. I try to, sir. Yes sir.

Q. Now, in your opinion, Mr. Simons, could any ballistics expert in the world, by examining this rifle here and now, tell this Court and jury when it was last fired prior to the firing of the test shots?

The Court: Do you understand the question, Mr. Witness?

The Witness: I understand it, but what another man may do, I don't know.

Mr. Doherty: I asked for your opinion, sir.

A. My opinion would be that he couldn't tell.

(Witness continuing.)

People's Exhibits 11, 12, and 13 are cartridge cases. I do not know what day those cartridge cases were fired. To my knowledge, there hasn't been developed a method of ascertaining which pellet comes from
557 which cartridge case. The Western Cartridge Company is located in East Alton, Illinois. They manufacture two types of .22 calibre, rim fire, long riflle cartridges. They have a slow speed, long rifle, which is known as "Western Expert". The trade-name of the high speed bullet is "Super-X". The "Super-X" has a head stamp. The head stamp is an "X" with the letters "S-U-P-E-R" on both sides of it. The "X" is larger than the "S-U-P-E-R". I think the S-U is on top and the P-E-R is located—well, anyway, it is "Super-X".

Q. May I refresh your recollection. On the head
558 stamp of the "Super-X" bullet, you have a large "X" with "S-U-P-E-R", superimposed on top of the "X". Is that right?

A. Yes, sir.

(Witness continuing.)

A long rifle .22 calibre, rim fire pellet weighs about forty grains. It may vary, maybe thirty-nine, around thirty-nine and forty grains. A pellet from a .22 long weighs about twenty-nine grains.

Mr. Doherty: Have you had an opportunity to examine People's Exhibits 16 and 17 now?

A. Yes.

Q. Will you tell the Court and jury what People's Exhibit 16 weighs?

A. Thirty-eight-and-three-eights grains.

Q. And what does People's Exhibit 17 weigh?

A. Thirty-six grains.

Q. Then they couldn't be longs, could be?

A. No, sir.

Q. That would be impossible, isn't that right, sir?

559 A. Yes, sir.

Q. Now People's Exhibits 11 and 12 are cartridge cases, isn't that right?

A. Yes, sir.

Q. They were turned over to you by Emmett Flynn.

A. Emmett Flynn and Stauffer, yes.

Q. Didn't Stauffer turn over People's Exhibit 13 to you?

A. That's right, Stauffer turned over People's Exhibit 13, and Flynn, 11 and 12.

Q. Now those cartridge cases were manufactured by the Federal Arms Company of Minneapolis, Minnesota, isn't that right?

A. Federal Cartridge Company, yes.

Q. And where are they located?

A. Minneapolis.

Q. Can you, sir, swear that those cartridge cases are long rifle cartridge cases; yes or no?

A. No.

Q. You don't know if they are longs or if they are long rifle, isn't that a fact?

A. They both are the same length.

Q. And you don't know if they are longs or long rifle? Isn't that a fact?

560 A. Yes, that is a fact.

(Witness directed to examine the head stamp on the exhibits.)

(Witness continuing.)

I see the letters "H P" stamped there. They mean high power. The high speed bullet manufactured by the Western Arms Company is called "Super-X". The pellet part of a "Super-X" bullet is a copper coated bullet and it has a—while it has a lead bullet,

561 it has a sort of copper color to it.

Q. Is the copper coating on the "Super-X" pellet sufficiently thick so that there remains traces of such copper after the bullet has been fired?

A. It will, yes. Traces of it will remain here and there on various portions.

Mr. Doherty: I ask you to mark this Defendant's Exhibit 1 for identification.

(Whereupon container is marked as Defendant's Exhibit 1 for identification.)

Mr. Doherty: Q. I show you herewith, Mr. Simons, Defendant's Exhibit 1, for identification, which purports to be a group of bullets. Now, sir, based upon your experience in the field of ballistics, can you tell this Court and jury what those bullets are?

Mr. Papanek: Object, your honor.

(Whereupon following proceedings were had in chambers outside the presence and hearing of jury, to wit:)

562 (Discussion between Court and counsel in chambers.)

563 (Whereupon the following proceedings were had within the presence and hearing of the jury, to-wit:)

The Court: Let the record show the objection is overruled and he may answer.

(Question read by reporter.)

564 (Witness continuing.)

This is just visual. I haven't been given an opportunity to weigh them, but I would say that these five bullets are luboloid coated .22 caliber. This is called luboloid coating. They are made—They may be of Western Manufacture, and they may be of .22 long rifle caliber.

Mr. Doherty: Now, sir, does your visual examination of Defendant's Exhibit 1 for identification disclose traces of copper still embedded in the lead?

565 Mr. Papanek: Objection.

The Court: Read the question.

(Question read by reporter.)

The Court: He may answer.

The Witness: Yes, they do.

(Defendant's Exhibit 2 for identification, a container, was marked.)

Mr. Doherty: Mr. Simons, I show you herewith what has been marked as Defendant's Group Exhibit 2 for identification, and ask you to examine it. Will you tell the Court and jury what your examination discloses?

(Objection by Mr. Papanek is overruled.)

566 The Witness: This Group Exhibit 2 consists of .22 caliber discharged rifle cases of Western Manufacture. They could be either .22 long or long rifle calibre.

(Witness continuing.)

I don't know which.

Q. Now, sir, will you tell the Court and jury what appears on the head stamp?

Mr. Papanek: Objection. The Exhibit speaks for itself.

The Court: He may answer.

The Witness: (continuing) The large "X" with the word "Super", superimposed over the "X".

(Witness continuing.)

I weighed People's Exhibit 15 for identification. It
567 weighed fourteen-and-three-quarters grains. I looked at it under the microscope. There are no lands and no grooves appearing on it. People's Exhibit 16 for identification weighs thirty-eight-and-three-eights grains. And People's Exhibit 17 weighs thirty-six grains. I testified they are long rifle calibers. I further testified that a long rifle pellet weighs approximately 40 grains.

Q. Now will you please explain to the Court and jury how you arrived at the determination that People's Exhibits 16 and 17 are long rifle pellets when they weigh less than 40 grains?

568 A. Well, I came to that determination because they weighed more than twenty-nine grains and it is normal that you could lose two or three grains because of penetration, and so forth, however, if they would have weighed less than twenty-nine grains, then I couldn't tell whether it was long or long rifle.

(Witness continuing.)

They also might let lose some weight as a result of lead fouling. When I measured those in grains, I was dealing in minute weights. I don't know whether a pellet that was fired through a clean rifle would lose less weight than a pellet that was fired through a dirty rifle.

569 Q. Would a pellet that was through a clean rifle lose less weight than a pellet fired through a rifle that contained lead fouling, in your opinion?

A. In my opinion, if the barrel of the gun was rough and in rather poor condition, why some of the lead could adhere to the interior of the barrel, some particles, and then, after the rifle became leaded, why, then, it may—the bullets, the succeeding bullets may lose some weight, yes.

(Witness continuing.)

If the same questions were asked of me in reference to a pistol, my answers would be substantially the same. People's Exhibit 9, in evidence, is a .22
570 calibre rifle with six lands and six grooves, right hand twist. There are other .22 caliber rim fire rifles which have six lands and grooves, right hand twist. I testified that, in my opinion, People's Exhibits 16 and 17 were fired from a .22 caliber with six lands and six grooves, right hand twist. Harrington and Richardson make a .22 caliber rifle rim fire. Harrington and Richardson .22 has six lands and six grooves and the direction of the twist is to the right. People's Exhibits 16 and 17 could have been fired from a Harrington and Richardson.

Q. Harrington and Richardson is one more popular .22 rifle, is it not, sir?

571 Mr. Papanek: Objection to the form.

The Court: He may answer.

The Witness: A. Well, I don't know how popular it is.

(Witness continuing.)

I don't know how plentiful it is. I do not have any statistical data as to how many Harrington and Richardson .22 calibre rim fire rifles there were in existence in the City of Chicago on December 5th, 1953.

Q. Do you have an opinion as to how many there were in Chicago on December 5th, 1953?

Mr. Papanek: Objected to, immaterial.

The Court: Objection sustained.

Mr. Doherty: Exception.

(Witness continuing.)

572 There are other .22 caliber rim fire rifles with six lands and six grooves, right hand twist. All .22 calibre weapons are not right hand twist. Colt manufactures weapons with six, left hand twist.

Q. Name the number of lands and grooves and the direction of the twist in the following .22 caliber, rim fire rifles. Reising?

Mr. Papanek: Objection.

The Court: He may answer.

The Witness: Six, right.

Mr. Doherty: Nobles?

Mr. Papanek: Objection.

The Witness: Six, right.

Mr. Doherty: Nobles Arms Company?

A. Six, right.

Q. Springfield Model 55A?

A. Six, right.

Q. Hamilton?

573 A. Six, right.

Q. Hibbard, Spencer, and Bartlett?

A. Six, right.

Q. Ward's Western Field?

A. Six, right.

Q. Now those rifles that I have just mentioned are not as popular as Harrington and Richardson, are they?

Mr. Papanek: Objected to.

The Court: Objection sustained.

Mr. Doherty: Well, could People's Exhibits 16 and 17 have been fired in any of those .22 calibre rifles?

A. Yes, they could have.

(Witness continuing.)

There are other more popular models, such as Remington. Remington has six lands and six grooves and the direction of the twist is right hand. Iver Johnson is the same. Savage is the same. Winchester has four and six, right. Some models of the Winchester are six, right. Various models are six, right. Marlin is six, right. Mossburg is six, right. J. C. Higgins is six, right.

People's Exhibits 16 and 17 could have been fired in any of those rifles. There are automatic target pistols on the market with six lands and six grooves. There are some foreign models of automatic pistols with six lands and six grooves, right hand twist. The

575 Spanish "Stan" has six lands and six grooves, right hand twist. The German make gun is called the Walther Automatic .22 and it has six lands and six grooves,

right hand twist. The .22 caliber Italian Beretta has
576 six lands and six grooves, right hand twist. There are American automatic pistols that have six, right. Risen would be one of them. Ruger would be another, and another would be High Standard Automatic Pistol. People's Exhibits 16 and 17 could have been fired from any of those automatic pistols I have named. There are .22 revolvers on the market with six lands and six grooves, right hand twist. Hopkins and Allen is one of them. Harrington and Richardson is another
577 one, I think. I am not quite sure about that. Smith and Wesson is another. Ruger is another. People's Exhibits 16 and 17 could have been fired from any of those revolvers.

Redirect Examination by Mr. McGovern.

(Witness continuing.)

When I speak of People's Exhibits 16 and 17, I am referring to lead pellets, and when I speak of People's Exhibits 11, 12, and 13, I am referring to cartridge
578 cases.

Q. Now could those cartridge cases, People's Exhibits 11, 12 and 13, have been fired from any other rifle other than People's Exhibit 9, that rifle?

Mr. Doherty: Object if the Court please. This is improper Redirect Examination.

The Court: He may answer if he knows.

Mr. Doherty: Exception.

The Witness: It is my opinion that People's Exhibit 11, which is one cartridge; that 12 and 13, that those three Exhibits were discharged in People's Exhibit 9, the Savage Stevens rifle there.

Recross Examination by Mr. Doherty.

(Witness continuing.)

I don't know what day People's Exhibits 11, 12 and 13 were fired. This was a Spincer Comparison Micro-
579 scope that I used. It has two microscopes where you put the Exhibits. It has one eye-piece. It has outside illumination. I can illuminate my objects. Lieutenant Ascher is the head of the Crime Detection Laboratory. We have photographers in the Crime Detection Laboratory. It is possible to photograph through the microscope and take pictures of the subject matter of the investigation, microscopic investigation. There
580 were no photographs taken in the crime laboratory of People's Exhibits 11, 12 and 13.

(Witness is excused.)

(Whereupon said Court was recessed until 2:00
581 o'clock of the same day, Monday, January 10, 1955.)

(Court convened pursuant to adjournment, Monday, January 10, 1955, 2:00 o'clock p.m. Parties present: same as before.)

(Whereupon the following proceedings were had within the presence and hearing of the jury, to wit:)

582 ROY TRINER, called as witness on behalf of the People, sworn, testified as follows:

Direct Examination by Mr. Papanek.

My name is Roy Triner. I live at 1926 La Salle Avenue. I am a Police Officer in the City of Chicago, assigned to the 23rd District, Marquette Police Station. That station is located at 2259 So[illegible] Bailey Avenue. I was so assigned December 5th, 1933, from mid-
583 night to 8:00 a.m. I worked at midnight between December 4th and December 5th, 1953. On that morning,

I went to 3101 West Harrison at about 2:30 a.m. When I arrived, there was a fire in the location of 3101 West Harrison and they were removing a body from the fire, from the side door, the Albany Avenue door. I checked the outside area and went into the premises. I was the only Police officer inside the prem-
584 ises. The rest were firemen. I examined the two doors at the Albany side of the building. That was about 2:45 a.m. There were two doors. The outside door was a screen door and then there was an inner door that was clad with metal on either side. The outside of the door had no handle whatsoever, in the inside there was a handle of the door, and through the handle
585 went a sliding bolt type lock. There was another lock just above this hinge and hasp type lock. In the lower portion of the door frame, there were bolted two metal brackets. There was nothing across that opening of those brackets. That would be a set of brackets that would be big enough of an opening to insert a two-by-four into. The frame of the door had a recess by the portion of the bolt, the female portion of the bolt and that slide portion set into that portion was missing, torn out of the frame.

Mr. Doherty: Objected to.

586 The Court: It may go out. Torn out of the frame may go out.

(Witness continuing.)

I looked for that female portion of the lock. I did not find it. There was debris in and about that particular premises. (People's Exhibit 19 marked for
587 identification.

(Witness is shown People's Exhibit 19, a photograph.)

Q. Do you know what that photograph portrays?

A. Yes.

Mr. Doherty: Objected to.

Q. Does that photograph, sir, correctly portray that portion of the door at the Albany Street side of the premises at 3101 West Harrison Street, that shows the locks which you have described, hasp lock, the handle, and the sliding bolt lock?

Mr. Doherty: Objection.

The Court: Step into chambers.

(Whereupon the following proceedings were had in chambers, to-wit:)

588 Mr. Doherty: Your Honor, the basis of my objection is that the Exhibit speaks for itself. Either it adequately and correctly portrays the scene as he there saw it at a certain time, or it doesn't without this final argument by the state.

The Court: The Court doesn't feel as though it was intended to be a final argument as such, and the objection will be overruled.

(Discussion between Court and Counsel off the record, after which the following proceedings were had within the presence and hearing of the jury, to-wit:)

589 (Witness answering last question.)

A. Yes, it does. (continuing) This Exhibit correctly portrays that portion of the door as I saw it on that morning of Decemmber 5, 1953, at 2:45 a.m.

(People's Exhibit 21 for identification was marked and shown to the witness.)

(Witness continuing.)

590 This picture truly and correctly portrays the screen door and the door frame of the Albany Street entrance of the building at 3101 West Harrison as I saw it

there on that same morning with the exception of the prop against the screen door. By the prop, I mean what looks like a tall box of some kind. The screen door is portrayed on the photograph the same as I saw it that morning, with exception of prop against screen door.

(People's Exhibit 20, a picture, was marked for identification and is shown to the witness.)

(Witness continuing.)

People's Exhibit 20, for identification, correctly portrays the outside view of the building at 3101
591 West Harrison Street as it was on the morning of December 5th, 1953. (People's Exhibit 22, a picture, was marked for identification and shown to the witness.)

(Witness continuing.)

This photograph truly and correctly portrays the left hand part of the door opening of the Albany side entrance of the building as viewed from the interior and also showing the immediate surroundings to the left of that doorway, and that is the way that portion of the premises therein shown appeared on the morning of December 5th, 1953, with the exception of the shovels.

592 (People's Exhibits, 23, 24 and 25, pictures, were marked for identification.)

(Witness continuing.)

People's Exhibit 23 for identification, which purports to be a photograph of the store portion of the Albany Street wall of the premises of 3101 West Harrison, looking in a southerly direction, correctly portrays that part of the premises, as of the fifth day of December, 1953.

593 (People's Exhibit 24, for identification, is shown to the witness.)

(Witness continuing.)

That picture truly and correctly portrays a view from the kitchen portion of the premises of 3101 West Harrison Street, looking at the door opening into the front bedroom and beyond that looking at the door opening into the rear bedroom, as of the morning of December 5th, 1953.

(Witness is shown People's Exhibit 25 for identification.)

(Witness continuing.)

People's Exhibit 25 truly and correctly portrays the wardrobe which was situated in the kitchen portion of the premises of 3101 West Harrison as of the morning of December 5th, 1953, with the exception of a jacket, a gray jacket that was hanging in the front. That jacket is missing from the picture. I had
594 occasion to examine the front door, the store door, at the northeast corner of the building at 3101 West Harrison that morning. I examined the locks of that door. With reference to the locks of that main door of the entranceway, the door itself was closed and there were two locks, one, the normal door opening lock and one, a Yale type lock. Both locks necessitated the use of a key from either side. The door
595 itself was locked and both locks were engaged. They were locked. I examined the door at the southwest corner of the premises. The door had, in the upper portion of the door, a sliding bolt type lock. Below, were two hinges and hasp type locks, only one of which had a lock on it, and in the lower third of the door frame were bolted metal brackets on either side

of this frame. The door and lock was chopped open. The plate glass windows were all out.

(The witness is shown People's Exhibit 26, for identification, a gray jacket with a brownish collar.)

(Witness continuing.)

I have seen that jacket before. That jacket I removed from the wardrobe in the kitchen, at 3101
596 West Harrison at about 6:50 p.m. on December 8th. It is in the same condition as when I removed it. That is the same wardrobe that has been pictured in the photograph heretofor identfied by me. The pockets of this jacket were empty of everything except one little business card.

(People's Exhibit 27, a card, was marked for identification.)

On December 8th, I examined other articles of clothing that were in that wardrobe, three other jackets hanging in the wardrobe. I examined the pockets of them. All the pockets in everything were empty.
597 Of the other three jackets that were in the wardrobe, one was a black and red plaid sport type jacket. One was a blue jacket that had yellow trimmings, and that jacket had the word "Vince" written, sewed into the jacket, and like a medallion on the front. On the back of the jacket, was a medallion that had the words "Fort Lewis, Washington", the abbreviations for Washington, I believe. The third jacket was a red and I believe a white trimmed jacket and that had the words "Modest Recreation Club" written on the medallion.

Cross Examination by Mr. O'Donnell.

I stated that I arrived there about 2:30. (Whereupon the Court cautions a juror not to take notes in jury box.) There were about twenty or twenty-five
598 people inside the premises. They were inside the premises when I got there. They were firemen. There were a few firemen that went outside the door as I was there. I am the officer that has been sitting in the courtroom throughout the entire course of this trial, most of the time. I have listened to the testimony that has come off the stand. I have made an investigation of the premises, that would include the whole premises.
599 I remained in the premises about an hour, roughly about 3:45 a.m. I saw a gas heater in the kitchen and inspected it. I saw another type heater. It was a gas heater that was suspended from the ceiling of the store. (Witness stepped down from the witness
600 stand.) The heater was suspended from the ceiling at an angle right here (indicating). This is the heater as portrayed on that plat (indicating). However, the heater was suspended from the ceiling at an angle in this manner (indicating). That is the gas heater in the store.

Q. Actually indicating for the purpose of the record close to the partition that separates the store from the living quarters, is that right?

A. That's right. The heater did not actually service both areas, both the store and the living quarters. The louvres were pointed in a manner to cut directly across the store. It was suspended from the ceiling. There was a broken pipe on the heater.

(Witness resumes stand.)

(Witness continuing.)

When I went into the premises, I went in the
601 Albany Avenue door. The door was open. I observed the condition of the outside surface of that door. It had been charred at the extreme edges of the door. On the inside, the metal portion was very much blistered. The outside of the door was blistered, just a small portion of it. I observed the door jambs. The outside portion appeared to me to be burned,
602 but not too badly. I noticed that there was a range in the kitchen. There was no pilot light on it. I investigated. There was no pipe on the kitchen range at the time I saw it. The range was in two portions. It was a gas, combination gas and oil heater but the oil part of it wasn't hooked up. The gas portion of it was. I did not notice any broken pipes on the kitchen range. I received orders to go to this location about 2:25. I went there for the purpose of investi-
603 gating the fire. I looked at the outside of the premises, not the neighborhood; the building itself; I am familiar with the location of Albany and Harrison Streets. On the Southeast corner of Harrison and Albany Streets there is a three-story building. It has a tavern downstairs and rooms in the rear of the tavern. There are flats in the upper two storys. The tavern in that building is directly across the street from 3101 Harrison. It runs parallel with it. I stated that I saw a wardrobe in the kitchen portion of the premises. The upper portion of the wardrobe seemed
604 to be blistered. On the lower portion as you come down from the top, the blistering sort of diminished until the bottom portion, which was not burned.

Q. That would indicate that the upper part was struck by fire but not the lower portion?

A. I don't know, heat could have done the blistering, too.

(Witness continuing.)

On the fifth day I did not make a detailed investigation of the wardrobe. I looked at it. The doors were open. I saw clothing. I just glanced. It was dark and I was just using my hand light and I passed the light over there, outside the wardrobe and the doors were open so I closed them. I saw there were clothes hanging but I didn't examine the clothing. I saw a
605 couple of jackets there as I passed a light over there.

Q. Well, did you see this jacket, People's Exhibit 26, at that time?

A. I saw a couple of jackets hanging there; that was there. I couldn't see any other jackets because this one was in front. I saw that jacket. I did not see anything else then. I did not see any rubber shoes in the bottom on the fifth day. I did not see any women's clothes on that day.

So, on December 5th when you looked in this wardrobe, all you saw was this jacket which is People's Exhibit 26, is that right?

A. I saw this jacket hanging there, yes, that jacket.

Q. That jacket?

606 A. Yes, and I saw other garments in there but I didn't make a detailed investigation of any of them.

(Witness continuing.)

I was not looking for a jacket on December 5th.

(Witness is shown People's Exhibit 9.)

(Witness continuing.)

I did not see People's Exhibit 9 on December 5th. I did not see anything wrapped in paper in the ward-

robe or partially wrapped in paper. I passed the light around the entire wardrobe, that is the outside, the inside clothing, the doors maybe three, four, five seconds. That was about all. I went back to the premises on December 8th at about 6:50 P.M. about three
607 and a half days after the time I was there previously. I don't know how many people were in and out of that building from the time I was there on December 5th until the time I went back on December 8th. When I went in the premises I went to the kitchen portion of the premises to the wardrobe. I did not go directly to the wardrobe. I went to the washroom portion first and then came around out of the washroom and around to the wardrobe. The doors on the wardrobe were closed. I opened the door. I reached in and brought out a jacket, and this is the jacket, People's
608 Exhibit 26. I went to that building for a two-fold purpose. One of them was that jacket. There were three other jackets. I observed there were children's clothing, coats and so forth hanging in the wardrobe. Women's house dresses and so forth. There was rubber shoes in the bottom of the wardrobe. I inspected the pockets of this particular jacket, People's Exhibit 26. I inspected the pockets of the other jackets. I found nothing other than this business card in
609 any of the jackets. I did not find any match cover books or any cigarettes or keys or money. I did not find People's Exhibit 9 either, the rifle.

(Witness is shown People's Exhibits 19, 20, 21, 22, 23, 24 and 25.)

(Witness continuing.)

I was present when a lot of photographs were made. I don't know whether these are the particular photo-

graphs. I don't know if I was present when People's Exhibits 19 through 25 inclusive were taken. The Crime Laboratory was taking the photographs. They took a couple of pictures on the night of the 5th. I don't know which of those pictures they took. I don't know if those pictures were taken on the night of the 5th. They took some of those pictures on the 16th, I believe it was. That would be approximately 9 or 11 days after the fire of December 5th. On December 5th I concluded my investigation at the scene at 3:45 A.M. I then went to Cook County Hospital. I stopped off at the morgue and then went to the hospital.

Q. Did you have a conversation with Vincent Ciucci on the morning of December 5th?

Mr. Papanek: Objected to as being outside the scope of direct examination.

Mr. O'Donnell: This is conversation with the defendant, your Honor.

The Court: Objection sustained.

Mr. O'Donnell: Q. Where in the Cook County Hospital did you go?

Mr. Papanek: Object. Same reason.

Mr. O'Donnell: Your Honor, this is cross examination.

The Court: I didn't hear your objection.

Mr. Papanek: The same reason.

The Court: The objection is sustained.

(Witness continuing.)

During the course of my investigation on the morning of December 5th, I had an opportunity to investigate the store or business portion of the premises. I observed some of the canned goods on the shelf

were swollen. Some of the canned goods on the bottom shelf were swollen. Some of the labels were brown from the heat, fire probably and some of them were wet. Labels come off and so forth. I wouldn't say that there were more swollen cans at the top of the shelves than the bottom. I took this jacket, People's Exhibit 26, off the premmises at that time. I took it to the 23rd District and inventoried it.
613 I took the other jackets. I removed those other three jackets on the morning of the 16th day of December.

Q. Did you ever have a conversation with the defendant, Vincent Ciucci, relative to the gas heater?

Mr. Papanek: Objection for the same reason.

The Court: The objection is sustained.

Q. If you know, Officer, were you present at the time that a statement from the defendant was taken on December 5th at 11:15 P.M.?

A. No, I was not.

Mr. Papanek: Objection. Outside of the direct.

The Court: Objection is sustained for that reason.

Mr. O'Donnell: Q. Officer Triner, were you present at the Coroner's inquest on December 7, 1953?

Mr. Papanek: Same objection.

(Whereupon the following proceedings were had in chambers, to-wit:)

614 Mr. Papanek: My objection is that this witness earlier has testified to having made an observation and inspection of the premises, from 2:30 A.M. roughly to 3:45 A.M. at 3101 West Harrison. That was the sum and substance of this witness' testimony.

Mr. Doherty: I believe that they brought out the fact that this man, Roy Triner, was in fact the investigating officer. May I further bring out the fact, your Honor, that they allowed this man to sit in the court-

room throughout the proceedings in this case with the information given to your Honor that this man was, in fact, the investigating officer. Now, if he is the investigating officer, we have a right to know what he investigated.

The Court: If you wish to go beyond the limits of direct examination, you then make him your witness. That is the basis of his objection. Now, as the court recalls it, the times he has testified to, his first visit on the morning of the 5th of December. He
615 testified to a visit on the 8th of December at 6:15 and he told what he did and then he reappeared on the 16th. Other than his visits to the premises the court has no recollection of any other testimony given by this witness. Now the coroner's inquest would be a separate and distinct place of inquiry as would any conversation had with Vincent Ciucci in the hospital.

Mr. Doherty: Do I take it then, your Honor, you are not permitting us to cross examine as to the interval of time when he left the premises on December 5th to the time he again re-entered the premises on December 8th? Is that my understanding?

The Court: The interval of time has nothing to do with the direct examination. The direct examination covered his visits to the premises in question and nothing else.

Mr. Doherty: In other words, your Honor, chronologically speaking, when a man testifies to a certain set of facts one of those sets of facts having been testified to, you can't go on to any other extrinsic fact and you are limiting the cross examination to these facts, is that right?

The Court: Mr. Doherty, the court has ruled that the objection, being based on the fact that questions
616 now being asked by you were not covered; that is, the subject was not covered in direct examination and therefore, it is improper.

(Whereupon the following proceedings were had within presence and hearing of jury, to wit:)

(Witness excused.)

(Whereupon the following proceedings were had in
617 the courtroom outside presence and hearing of jury, to wit:)

Mr. McGovern: Your Honor, at this time the state offers in evidence People's Exhibit 6 for identification which purports to be a pillow slip.

Mr. Doherty: We object to the admission of the pillow slip on the grounds that it is inflammatory and prejudicial and it has no probative value whatsoever. No showing of any logical connection between this and the crime charged in the indictment. For that reason we are objecting to it.

618 The Court: It may be admitted and received in evidence.

Mr. Doherty: Exception.

The Court: Let the record show that the defendant has a stand objection to any of the court's rulings at this time in connection with the offer of the exhibits.

(Whereupon People's Exhibit 6, for identification, was received in evidence as People's Exhibit 6. People's Exhibit 7 for identification, a piece of bed sheet was offered as People's Exhibit 7 over objection of
619 defense. People's Exhibit 8 for identification, a piece of bed sheet, was offered and received as People's Exhibit 8 over objection of defense.)

Mr. McGovern: We will also offer at this time People's Exhibit 11 for identification purporting to be a .22 caliber cartridge case, discharged cartridge case, and People's Exhibits 12 and 13 for identification also discharged .22 caliber cartridge cases.

620 Mr. Doherty: We are objecting to the admission of those in evidence, upon the fact that there is no showing when those cartridge cases were discharged and there is no showing in evidence when People's Exhibit 9, the .22 caliber rifle, was last discharg d prior to the firing of the test shots. Therefore, they are conjectural and of no probative value.

The Court: People's Exhibits 11, 12 and 13 may be received in evidence.

(People's Exhibits 11, 12 and 13, for identification, were received in evidence as People's Exhibits 11, 12 and 13.)

Mr. McGovern: We are also offering at this time People's Exhibit 14 for identification purporting to be a stained pillow which was recovered at the scene and delivered to the Crime Laboratory where a lead pellet was removed from it.

Mr. Doherty: Same objection as the objection previously voiced as to the bed sheets and again, may I point out to your Honor that this is so extremely
621 inflammatory in nature that under no circumstances should it be admitted in any case.

The Court: It may be received.

Mr. Doherty: Exception.

(People's Exhibit 14 for identification was received as People's Exhibit 14. Offer by state of People's Exhibit 17, for identification, a lead pellet.)

Mr. Doherty: I object to it on all the grounds heretofore stated plus the fact that from the evidence adduced on cross examination of the ballistics expert

it has been shown to your Honor, and I think to this
622 jury that this pellet could have been fired from any .22 caliber gun in the world; therefore, there being no logical connection, I am objecting.

The Court: It may be received.

Mr. Doherty: Exception.

(People's Exhibit 17 marked for identification was received in evidence as People's Exhibit 17. Offer by state of People's Exhibit 18 for identification, the test shots, the discharged cartridge cases and pellets.)

Mr. Doherty: In addition to the objections heretofore raised, by defense counsel, we object to this on the additional grounds that it is a self serving piece of evidence.

The Court: It may be admitted.

Mr. Doherty: Exception.

(Whereupon People's Exhibit 18 for identification
623 was received in evidence as People's Exhibit 18. People's Exhibit 19 for identification, a picture, was offered and received in evidence without objection as
624 People's Exhibit 19. People's Exhibit 20 for identification was received in evidence for People's Exhibit 20 without objection.) (People's Exhibit 21 for identification offered in evidence.)

Mr. Doherty: I most certainly object to this photograph being introduced in evidence for the plain and simple reason that the fireman first on the scene testified here on cross examination that the screen door was not damaged in any way, that it was merely closed, no physical damage to it. All the damage there was there was fire damage. Now, as your Honor can see, there is physical damage to that door. This
625 is the exit Captain James Conte so testified that there was no damage. Therefore, that does not truly

and correctly portray the scene. And that prop, as Officer Triner testified to, was not there.

The Court: It may be received in evidence for the purpose of showing the type of door that was then on the premises at the time of the occurrence and it may be noted that that brace up against the door is not part of the exhibit.

Mr. Doherty: Exception.

(People's Exhibit 21 for identification was received in evidence as People's Exhibit 21. People's Exhibit 22 for identification was received in evidence as
626 People's Exhibit 22 without objection. People's Exhibit 24, for identification, offered and received in
627 evidence as People's Exhibit 24 without objection. People's Exhibit 25 for identification purporting to be a photograph of the wardrobe located in the kitchen of the premises at 3101 West Harrison offered in evidence.)

Mr. Doherty: May it please your Honor, we most certainly object to this on the ground that there is no showing that this is the condition of the wardrobe at any time which could be construed to be forming part of the res gestae.

The Court: May I see it please. When was this photograph taken, Mr. McGovern?

Mr. Papanek: May I just indicate the evidence in the case. The evidence on the identification of the correctness of that particular exhibit is that it is a true and correct portrayal as it was there on the 5th day of December 1953 with the exception that
628 this jacket, the gray jacket, was removed from it and that is in the record.

The Court: Subject to the exception, it may be received in evidence.

Mr. Doherty: Exception.

(People's Exhibit 25, for identification, was received as People's Exhibit 25. State offers People's Exhibit 26 for identification, a gray jacket with fur collar, and it is received in evidence over objection
629 of defense as People's Exhibit 26. State offers People's Exhibit 27, for identification, a business card with the writing M. T. Russell on the front side. Objection as immaterial. Offer withdrawn. With regard to People's Exhibit 23 previously offered and ruling withheld, Mr. Doherty offers objection that it does not in fact truly and correctly represent the premises, and because it is inflammatory and prejudicial. This objection overruled.) (People's Exhibit 23, for identification, received in evidence as People's
630 Exhibit 23.)

(Whereupon the following proceedings were had in chambers, to wit:)

Mr. Doherty: We are objecting at this time specifically to the showing of the pillow and the jacket to this jury and especially the pillow because what-
631 ever probative value that this exhibit has it is far outweighed by its inflammatory nature and I am requesting at this time that that pillow be covered up. There is only one reason for having it in here to show where the bullet came from. There is no point in inflaming the minds of the jurors by showing it to them. They have proved where the bullet came from. Let that be sufficient. That is the basis of my objection.

The Court: The objection will be overruled. They may proceed to show the exhibits to the jury at this time.

Mr. Doherty: I am again making a motion for a mistrial.

The Court: Motion denied.

(Whereupon the following proceedings were had within the presence and hearing of the jury,
632 to wit:)

JERRY J. KEARNS, called as a witness on behalf of people, sworn, testified as follows:

Direct Examination by Mr. Papanek.

My name is Jerry J. Kearns. I live at 3432 Jackson Boulevard, Chicago. I am a physician and surgeon and pathologist for the coroner of Cook County. I studied medicine at the College of Medicine, University of Illinois. I interned at Cook County Hospital. I was graduated in 1926. I stayed a year and a half as intern and stayed as a resident until 1928.
633 I received my license to practice medicine in the State of Illinois in 1927. I specialized in the field of pathology. I pursued this study at Cook County Hospital and as a teacher at the College of Medicine, University of Illinois, and Rush Medical College in Chicago. I have been associated with that hospital since 1928. At the present time I am coroner's physician. I have held that position since December 4, 1928, except for five years during which I was in the military service. Pathology in lay language is the study of the cause and effect of disease or injury to the organs or the body as a whole. As coroner's physi-
634 cian my duties are to determine whether foul play has been committed in the case of death.

Objection.

The Court: Sustained, and the jury will disregard the last remark.

(Witness continuing)

Medically my duties as coroner's physician are to examine dead bodies. We are authorized arbitrarily to do an autopsy.

Q. To determine what?

A. To determine whether foul play has been—

Mr. Doherty: Objection.

The Court: Objection sustained. That part may go out.

(Witness continuing)

635 That would be to determine the cause of death. Since I have been coroner's physician I have performed several thousand autopsies.

Q. And of those several thousand autopsies how many of them involved gun shot wounds?

Mr. Doherty: Objected to.

The Court: He may answer if he knows.

The Witness: Oh, I would say at least 700 or 800 in the past 26 years.

Q. And how many involved burning?

A. I would say in which the relation between fire, burning and inhalation of smoke—

Mr. Doherty: Objection.

The Court: Read the answer that was given.

(Answer read)

636 The Court: He may continue.

(Witness continuing)

I have examined several hundred bodies where death was due to burning. I have performed autopsies where I have found burning and gun shot wounds. I haven't counted them but my memory is refreshed to four, 637 about four I am sure. I am affiliated with coroners, pathologists of the Cook County and pathologists of St. Elizabeth's Hospital and consulting pathologist of Naval Hospital, Great Lakes, Illinois. With St. Elizabeth since 1939 to 1940 and then 1946 to the

present, with the Naval Hospital as consultant since 1946. On the 5th day of December 1953 I saw the body of a male child. It was identified to me as that of Vincent Frank Ciucci. I saw that body at the Cook County Morgue during the morning hours and then
638 later in the afternoon about between 5 and 6 in the evening. There was an undertaker and his assistant present when I saw the body. I took the body of Vincent Frank Ciucci up to the laboratory for the purpose of performing an autopsy. Alex Carbanera, the undertaker's assistant, was present. I performed the autopsy on the body.

Q. Will you relate to the ladies and gentlemen of this jury and to his Honor, Judge Murphy, what you saw with reference to that body and what you did?

A. The body was that of a nine year old boy who was well developed. There were burns in the skin, the upper part of the trunk, face and neck as demonstrated by changes in the skin. In addition, there was a bullet wound in the right side of his head.

Mr. Doherty: Objected to as calling for a conclusion.

639 The Court: Objection sustained.

Q. Now, Doctor, you saw a wound did you?

A. I did.

Mr. Doherty: Objected to as a characterization of a wound.

The Court: Read the question.

(Question read by reporter)

The Court: The objection is sustained. Jury is to disregard.

Tell this court and jury what you saw, Doctor, with reference to that body.

A. There was this wound of entrance—

Mr. Doherty: Objection.

640 (Whereupon following proceedings were had in chambers outside presence and hearing of jury, to-wit:)

Mr. Doherty: Now, your Honor, I will certainly object to the characterization of a hole in the head as being a wound. First of all, he calls it a bullet wound. Let him say he saw a hole.

The Court: Mr. Papanek, it is the court's opinion that he does have a right to characterize it in his opinion as to what he sees, but again that is a con-
641 clusion. Now—

Mr. Papanek: A wound, judge, is a conclusion?

(Whereupon a discussion was had between court and counsel off the record)

The Court: The court will permit him to proceed based on the definition which the court has just read from Webster's New Collegiate Dictionary.

Mr. Doherty: We are objecting to the characterization for the record.

(Whereupon following proceedings were had in courtroom within presence and hearing of jury, to-wit:)

(Question and answer read by the reporter as follows: "Q. Tell this court and jury what you saw, Doctor, with reference to that body?" "A. There
642 was this wound of entrance—")

(Witness continuing)

This wound was in the right side of the head. It was an irregular circle, torn slightly on the edges and blackened above the edges, and this was four inches above the trunk or tragus of the ear, this part of the ear (indicating), four inches above, ten centimeters above the bullet.

Mr. Doherty: Objected to.

The Court: Objection is sustained.

Q. What else did you see in and about the head of that body?

A. Now, on reflecting the scalp I found a perforating wound in the underlying bone corresponding to this wound in the scalp, irregular, circular.

Q. Describe the diameter of that wound through the scalp, through the skull?

A. It was about a centimetere; that is about two-fifths of an inch in diameter.

Q. All right, what else did you see?

A. The wound in the bone over this wound in the scalp was fragmented on the inside; that is to say, the bone has two tables, inner table and outer table, and the inner table was fragmented on the inner side,
643 and the brain was lacerated, parietal-temporal lobe in the right hemisphere, parietal and temporal in the left with hemorrhage into the brain, hemorrhage under the coverings of the brain. Then a wound, a perforated wound as I mentioned four inches above the tragus of the left ear and two centimeters or four-fifths of an inch behind. In this bone, the outer table was fragmented, there was a perforating wound in the inner table. The outer table was fragmented and the wound in the scalp was larger than on the right side.

Q. Now, Doctor, do you have an opinion, Sir, from your experience in the posting of these bodies as a Coroner's physician, as you described, as to what caused those wounds that you have been describing to the court and jury?

A. I have.

Q. What is that, Doctor?

Mr. Doherty: Objected to.

The Court: He may answer.

The Witness: That the wound in Vincent Ciucci's head, the brain and the skull was the result of a bullet and this bullet passed through the head from the right side, entering on the right and leaving on
644 the left side.

Q. Dr. Kearns, from your experience as a coroner's physician and from your experience in the posting of these many bodies, do you have an opinion, Sir, as to the caliber of that bullet that you have just described as passing through that head?

Mr. Doherty: This is most certainly objected to if the court please.

The Court: He may answer if he has such an opinion.

The Witness: I have an opinion.

Mr. Papanek: What is that opinion?

Mr. Doherty: Objected to for the same reason.

The Court: He may answer.

The Witness: That is was a .22 caliber size.

Q. Now, Dr. Kearns, Sir, do you have an opinion from your experience as a Coroner's physician and from having posted the body of Vincent Frank Ciucci, as to the extent of the brain injury with reference to causing the ultimate death of Vincent Frank Ciucci?

A. I have an opinion.

Q. What is that opinion, Doctor?

A. That this bullet wound in the head involving the brain was a fatal wound; that is to say this individual would have died—

645 Objection.

Mr. Papanek: All right.

Q. Now, Dr. Kearns, did you do anything further with reference to the posting of the body or performing an autopsy on Vincent Frank Ciucci?

A. I did.

Q. What was that please?

A. I collected blood from the heart for the purpose of determining whether the individual was alive before he was shot.

Mr. Doherty: Objected to as not responsive.

The Court: I didn't hear the objection. Read the question.

(Question and answer read by the reporter)

647 The Court: It may go out and jury instructed to disregard.

(Witness continuing)

I examined the body for the extent of the burns, and after examining the brain, I examined the organs of the trunk and lungs by opening the trunk through the midline. I received a report, pathological report as to the sample of blood I submitted. This report indicated 88% concentration of carbon monoxide in the body of Vincent Ciucci.

648 Q. Dr. Kearns, do you have an opinion based upon your examination of the body of Vincent Frank Ciucci, and having performed the autopsy as you have described, and further based upon your experience as

a Coroner's physician as to whether Vincent Frank Ciucci was alive at the time that that bullet wound of entrance was made in the head of that boy?

A. I have an opinion.

Mr. Doherty: Objected to.

The Court: He may answer.

Mr. Papanek: What is that opinion, Doctor?

A. In my opinion, Vincent Frank Ciucci was alive when—

Mr. Doherty: Objected to.

The Court: It may stand. Complete your answer, Doctor.

The Witness continuing: —when he suffered the bullet wound of the brain.

Mr. Papanek: Q. Now, Dr. Kearns, do you have
649 an opinion, Sir, as to what the cause of death of Vincent Frank Ciucci was, Sir, as the result of this autopsy?

A. I have an opinion.

Q. What is that opinion, Doctor?

A. Considering the fatal wound in the brain the individual's death—

Mr. Doherty: Objection to the qualification of the answer.

The Court: It may stand.

The Witness: The death was—the interval between life and death was shortened by the inhalation of smoke and carbon monoxide.

Mr. Papanek: And the cause of death was due to what?

A. The immediate cause, of course, would be the exposure to the gas but the cause was still there, in the form of that bullet wound.

(The Witness continuing)

I had occasion to see a body of a woman that was identified to me as that of Anna Ciucci. That was in the Cook County Morgue on December 5, 1953. Alex-
650 Carbanera, an assistant undertaker, was present when I performed an autopsy on her body.

Q. Now, will you relate to the court and to the jury what, if anything, you found with reference to the examination of her body, please?

Mr. Doherty: Objected to.

The Court: He may answer.

The Witness: Anna Ciucci was 28 years of age and well developed and she was extensively burned, the skin on the face and trunk and the extremities and she had a wound in the middle of her forehead.

Mr. Doherty: Object to the characterization of the opening in the head as a wound.

The Court: It may stand.

(Witness continuing)

651 The wound was a little to the right of the midline of the center of the forehead about four-fifths of an inch above the bridge of the nose.

Q. And what did you do then after you saw that?

A. Now this wound around its irregular circumferential edges—

Mr. Doherty: Objected to.

The Court: (Objection sustained, answer stricken, jury to disregard)

(Witness continuing)

652 After examining this opening in the forehead which I described as being a centimeter in diameter, and its margin irregularly backed, I reflected the scalp to examine the skull and the brain and I found, cor-

responding to this side of this opening in the forehead an opening in the underlying frontal bone of the skull. Now its internal surface, the inner table, was saucerized or fragmented, as compared with the outer table, and the underlying brain was torn, lacerated, hemorrhage poured into the brain and into the space between the coverings of the brain, and in the occipital lobe; that is, in the back of the brain, I found a mutilated lead bullet.

Mr. Doherty: Object to that.

The Court: It may stand.

(Witness continuing)

I marked this bullet for identification and on the 6th of December 1953 I gave the bullet to Officer Alexander Dean. (Witness is shown a piece of lead
653 pellet identified as People's Exhibit 13 for identification.) I saw that before. This bullet was in the brain of Anna Ciucci. I marked it with my initials on the base surface. It is in the same condition now as when I first saw it. Based on my experience as a coroner's physician and from posting the body of Anna Ciucci I have an opinion as to whether she was alive or dead at the time of that bullet wound of entrance. It is my opinion that Anna Ciucci was alive at the time of this bullet wound. I have an opinion as to what size or caliber bullet made the
654 hole in the forehead of Anna Ciucci. In my opinion, the hole in the forehead was the result of a bullet caliber .22. I had occasion to see the body of a girl that was identified to me as that of Angeline Ciucci. This body, too, was at the Cook County Morgue on the 5th of December, 1953. I examined that body.

Q. And will you tell the court and jury what you found with reference to the examination of her body, please?

Mr. Doherty: Object to all of these other bodies other than the one that forms the basis of this indictment.

The Court: Let the record show an objection by the defense counsel and the court overruling the objection.

(Witness continuing)

Angeline was four years old, well developed child.

655 The skin extensively burned, destroyed by fire and fumes and there was a wound, a perforating type wound in the cheek. On Angeline's cheek on the right side, two inches from the midline. On reflecting the scalp, I found that wound from the inside of the skull through the bones of the skull, the orbital bone. (indicating) I am indicating a course from the right and diagonally upward, to the back of the head, passing through these bones and the base of the skull and causing tearing and hemorrhage into the brain on the right side and on the left side, and in the occipital lobe. The part of the brain in the back of the head on the left side, I found a bullet. I turned this bullet over to the Officer Alexander Dean of the 23rd District, Chicago Police Department on the 6th of De-
656 cember 1953. I marked the bullet before giving it to him. (Witness is shown People's Exhibit 16 for identification, a lead pellet)

(Witness continuing)

This is the bullet I removed from Angeline Ciucci. I can identify it by my mark on its base. There is the initial "K". It is in the same condition now as when I removed it and marked it on the 5th of December 1953.

Q. Doctor, will you describe the opening of that wound at the point of entrance on that cheekbone?

A. Yes, this wound in the cheek measured — it was irregularly circular and measured one centimeter at its largest diameter. It was discolored, brownish-black, and the bones, the orbital bones, were fractured. I have an opinion based upon this autopsy and from the extent of the brain hemorrhage and injury and from my experience as coroner's physician as to
657 whether or not Angeline Ciucci was alive at the time of entrance of this bullet. My opinion is that Angeline Ciucci was alive. I posted the body of Virginia Ciucci on December 5, 1953, at the Cook County Morgue. I had occasion to see that Virginia was 8 years of age. She was well developed, who had burns in the skin of the head and neck and trunk and extremities, and she, too, had a perforating wound in the right side of her head four inches above the tragus or tongue. This wound was circular, irregular with fragmented edges and discolored. I reflected the scalp and examined the
658 bones of the skull and the brain and I found that on the right side, the inner table again was fractured, saucerized, as compared with the outer table. This would indicate the direction of entrance. Now the underlying brain was extensively lacerated as evidenced by hemorrhage, hemorrhage into the brain, hemorrhage into the space between the coverings and the brain. Then there was a wound of exit. This wound of exit, the mastoid bone, the tip of the mastoid bone seven centimeters above. That would be two and four fifths of an inch above and five centimeters behind, two inches behind, the skin was fragmented. And the underlying skull, the outer table was more extensive-

ly fractured than the inner table. This wound entrance was four inches above the tragus. The wound itself
659 measured a centimeter and its margins, its edges around its periphery were fragmented and discolored, brownish black. From my examination of that particular point of entrance of the skull of Virginia Ciucci and my experience at posting of many bodies as coroner's physician I have an opinion as to the size of the bullet, the diameter of the bullet that caused that wound. It is my opinion that the bullet wound in the head of Virginia Ciucci was a .22 caliber. From my examination of Virginia Ciucci's body and from examining the extent of brain injury I have an opinion as to whether or not Virginia Ciucci was alive or dead at the time that bullet wound entered her head. It is my opinion that Virginia Ciucci was alive at the time of the bullet wound of her head.

660 *Cross Exmaination by Mr. Doherty.*

I testified that I am a physician and surgeon and pathologist. Pathology is the study of the cause and effect of various human ailments arising due to trauma and disease. I am familiar with the cause and effect of carbon monoxide intoxication. The cause of carbon monoxide intoxication is inhalation of this gas which represents incomplete destruction of combustion of organic material. Now this organic material causes in effect what wool or coal in decomposition produces. It is the incomplete combustion of the carbon monoxide.
661 Death or asphyxiation could result from inhaling illuminating gas. The effect of the human ailment known as carbon monoxide intoxication is asphyxia. It is a gas that causes one to lose consciousness and

if the individual is exposed long enough, or if the concentration of the gas is high enough it will produce death by becoming attached to the red blood cells in the blood stream, whose function it is to carry oxygen. Now its attachment to the red cells is such as to make it impossible for these red cells to carry this oxygen.

Now if the red cells cannot take up the oxygen that is inhaled, the individual loses consciousness, and as I said, if the exposure is long enough to low concentration or short enough to high concentration, death occurs. It is correct to say, medically, that exposure to carbon monoxide gas might cause tissue destruction
662 in the human body. It adheres to the red cells and if the tissues don't get oxygen they are destroyed. It could adhere to the red cells and be carried to the various parts of the body. It causes tissue destruction throughout the body depending upon its extent, of course, depending upon the sensitivity of the organ. The brain, being very sensitive, a very sensitive organ requiring oxygen more than muscles, for example, the destruction in the brain would be greater. It might cause brain tissue destruction in the basal ganglia. It might cause tissue destruction in the lanticular striate
663 nucleus. You pronounce those terms correctly. The basal ganglia is a portion of the brain, the parts of the brain concerned in our motion, those parts of the brain which take over automatic activities. For example, I don't have to concentrate to scratch my cheek. These are products of the brain and these are vital. It they are destroyed, one might have what is called the Parkinson's disease commonly known as the "shakes", so to speak. This ability to concentrate—, this ability to coordinate activity is lost.

Q. Doctor, based upon the fact that children have a more rapid respiratory cycle, would you, based upon your knowledge, say that children would be more susceptible to carbon monoxide intoxication than adults?

A. Now, are we talking about these children about whom I have just talked about?

Q. Anyone you want to talk about.

A. Now, about these children, the age factor did not play a role because of brain injuries. They were
664 all the same, all rendered unconscious so that it wouldn't much matter whether child or adult. The concentration was 57% in Virginia, 60% in Angeline, 86% in Anna, and 88% in Vincent, so here it didn't much matter which, whether child or adult.

Q. Now, Doctor, in a survival case, might there be a loss of coordinated motor activity.

Mr. Papanek: Object.

(Whereupon following proceedings were had in chambers, to wit:)

Mr. Papanek: I have not objected to any inquiry with reference to the qualifications of Dr. Kearns insofar as it had to do with matters that might touch upon his qualifications as the coroner's physician and his knowledge of pathology. The present question, Judge, is now beyond anything that has to do with any issues in this cause. This doctor, by the evidence, had only one connection with this case and that was to perform an autopsy on four bodies. He has testi-
665 fied that he performed this function. There is nothing in this record, nothing in this testimony, that he had anything to do with any of these bodies before they died. There was never any connection with his having

anything to do with any live bodies that were in this fire. The only connection was with reference to the four bodies at the County Morgue and for that reason I object at this time.

Mr. Doherty: I am a young man and I do not want to make the mistake of interrupting this doctor in front of this jury. I asked him two questions I think so far and the rest has been up to him. Now, I am inquiring into his qualifications. I did not stipulate to his qualificatons nor did I waive them, if the court please, and I believe that if this man is going to tell this court and this jury that he is a pathologist, and I say to your Honor—mind you now, I have a book right here, a medical book, I have right in front of me and if it develops that I can impeach him and he
666 shows he is not qualified, then, your Honor, I should be able, I should be permitted to try at least. This goes to his qualification. It he doesn't, if he does or doesn't know what he's talking about, I want to find out if he knows. I've got a book out there and I know what they say and I'm asking him questions. That's all. I think I could cross examine this man for the next two days on his qualifications as a pathologist and if I can show this court and this jury that he doesn't know what he's talking about, then, your Honor, of course everything that he said on cross examination means nothing and that is all I am doing.

667 (Question read by the reporter)

668 (Discussion between court and counsel)

The Court: The court is ready to rule. The court will permit him to answer the question.

669 (Whereupon following proceedings were had in the courtroom within presence and hearing of jury, to wit:)

The Witness: A. Should the individual survive exposure—well, survival for how long- If he survives he may remain unconscious for an indefinite amount of time. However, if the exposure in concentration or duration wouldn't be sufficient to destroy the cortex of his brain he would survive and then have only the residue that I described as the so-called "shakes".

(Witness continuing)

The after effects of those recovering from acute
670 carbon monoxide poisoning are extremely varied. There may be a disturbance of the memory, of the vision and of the hearing. Hearing not as common as the vision because vision is more of a specialized sense. Polycythemia is increased number of red cells in the blood, in the male six million, six million and a half rather than five which is the average or in the female five million or six million, the average being four million and a half. Of course, the hemoglobin might be elevated unless one goes to a high altitude like in leaving Chicago and going to Colorado, leaving Chicago with an altitude of 800 feet to 5000 feet in Colorado. More rarely in survival cases follow-
671 ing acute carbon monoxide poisoning we may find cases of paralysis.

Q. Now, Doctor, can you tell us about the modern scientific methods for diagnosing carbon monoxide intoxication?

Mr. Papanek: Objection.

The Court: He may answer.

The Witness: I am not qualified as a toxicologist, rather as a pathologist. I submitted this material to a toxicologist so I should refer that sort of question to him.

(Witness continuing)

Doctor Walter J. Camp, Professor of Toxicology at the College of Medicine of the University of Illinois, toxicologist for the Coroner of Cook County and for the State of Illinois, was the toxicologist.

Q. Do you, of your own knowledge, know of the uses of the iodine pen toxide method?

A. I am sure he uses methods that are acceptable
672 from the standpoint of technique and accuracy.

Q. Do you know what the maximum amount of concentration in the hemoglobin of the blood would be of carbon monoxide before death would ensue.

A. The maximum, well I would say that, for example, Vincent was 88% and in his mother, 86, it could go to 90, if they had survived long enough. They were unconscious or just laying there, freezing, if they hadn't been shot.

Q. Taking into consideration the concentration of carbon monoxide at the time the toxicologist report reveals in reference to Vincent Frank Ciucci, what was the primary cause of his death?

A. I believe I have already testified about that bullet wound in the brain and extensive burning and now inhalation of carbon monoxide to the extent of 88% concentration. That, of course would cause death; 88% would cause death, anything over 30% would cause death.

Q. Doctor, a person cannot die from more than one thing, isn't that right, only one primary cause of death, is that right?

A. One primary cause of death, but that could be accelerated. Death could be accelerated; that is to say;
673 a bullet wound to a person such as these people, a person with a bullet wound would survive for minutes, or hours, or even days, but the inhalation of carbon monoxide, that interval between the wound and death would be shortened or accelerated.

Q. Doctor, what was the primary cause of death of Vincent Frank Ciucci?

A. The inhalation and the bullet wound. The inhalation—

Q. Now, just a moment. I don't like to interrupt you, Doctor, but you just told me there could be only one primary cause.

A. That's right.

Q. What is that?

A. Inhalation of carbon monoxide.

(Witness continuing)

I gave my opinion as to the through and through bullet wound on Vincent Frank Ciucci. In my opin-
674 ion, it was a .22 caliber bullet.

Q. You are not a ballistics expert are you, Doctor?

A. I am not a ballistics expert, but—

Q. All right. Now—

Mr. Papanek: I submit that the witness should be permitted to finish.

Mr. Doherty: I submit that is the answer without any volunteered statement, it the Court please.

(Answer read by reporter)

The Court: He may finish his answer.

But as a result of seeing the wounds and finding the bullet wounds of entrance and finding bullets such as I found in two of these cases, Anna, mutilated, and Angeline, the less mutilated, and the wound of entrance, comparing the diameter, it was my opinion that Vincent and Virginia had been shot by a bullet of the same caliber.

675 Mr. Doherty: Move answer be stricken.

The Court: It may stand.

(Witness continuing)

I cannot tell you how much the piece of lead weighed that I took from the brain of Anna Ciucci. I cannot tell you how many lands and grooves there were. I know that it is a bullet. When I took a sample of the blood and sent it to the toxicologist, Idid that with a chemically clean needle and syringe and a chemically clean bottle, containing a non-coagulant, such as calcium satrine. I removed it from the right chamber of the heart, 10 cubic centimeters, third of an ounce of blood and then sealed and labeled it and put it in a locked room in an ice box. It contained an anti-coagu-
676 lant. On the head of Anna Ciucci, the skin was so thoroughly destroyed that if there were scars, I wouldn't say there were or there weren't. I don't have a recollection of noticing any sawdust. I don't recall sawdust on any of them. When I posted the bodies, I wasn't assisted. I had a man standing there, helping in the physical part of lifting, but I wasn't assisted. The embalmer's assistant, Alex Carbonera, was kind enough to lend a hand in the absence of my usual help. I believe I attended the coroner's inquest December 7, 1953.

677 Mr. Papanek: Objection.

(Whereupon the following proceedings were had in chambers.)

The Court: If it is (last question) for the purpose of impeachment, you will take the route suggested by Mr. Papanek. Now, if this is not for the pur-
678 pose of impeachment, but merely regular routine cross examination, then, the objection is sustained because it is without the scope of the direct examination. But the Court is saying if it is for the purpose of impeachment, Mr. Doherty, you may proceed providing you follow the route required by law.

(Discussion had off record between Court and counsel, after which, following proceedings were had in courtroom within presence and hearing of jury, to wit:)

The Court: Let the record show the objection is sustained. You may proceed, Mr. Doherty.

(Witness continuing)

I did not see Vincent Ciucci, Sr., on December 7, 1953.

679 Mr. Doherty: Now, did you, Sir, on December 7, 1953, have occasion to consult with Dr. Emmanuel Devorak, attached to the Bridewell Hospital, and Dr. Adolph Battrickin in reference to the health of Vincent Ciucci, Sr.?

Mr. Papanek: Same objection.

The Court: Objection sustained.

(Witness excused)

(Whereupon the Court recessed until 10:15, January 11, 1955)

(Bailiffs were sworn)

(Whereupon following proceedings were had out-
680 side presence and hearing of jury.)

(Mr. McGovern offers People's Exhibit 15 for identification and People's Exhibit 16 for identification and asks that they be received in evidence. Mr. Doherty objects. The Court orders the exhibits be received in evidence as the same numbers of the exhibits for identification, that is, 15 and 16.)

(People's Exhibits 15 and 16 were received in evidence.)

Whereupon said cause was adjourned until the
681 following day, Tuesday, January 11, 1955, at 10:15 o'clock a.m.)

682 Tuesday, January 11, 1955
Morning Session, 10:00 a.m.
Court met pursuant to adjournment
Parties present: The same.

(Whereupon following proceedings were had in the courtroom outside presence and hearing of the jury, to wit:)

683 Mr. Papanek: We have made an offer outside the presence of the jury on all remaining exhibits and withdrew People's Exhibit 27, which was a card.

Mr. Doherty: Yes, but we object to the jury looking at the exhibits.

The Court: The Court has considered it and has decided to permit the jury to examine the photographic exhibits and the bullets and the cartridges, the cartridge case.

(Whereupon the following proceedings were had in the presence and hearing of the jury, to wit:)

Mr. Papanek for the State offers into evidence People's Exhibit 6, People's Exhibit 7, People's Exhibit 8,

684 People's Exhibits 11, 12 and 13, People's Exhibits 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26, and describes them as he offers them. All are received in evidence as the State's exhibits, numbered as indicated by the ex-
685 hibit, for identification, over the objection of the defendant.

Permission is given by the Court to the State to display, and have the jury examine all the photographs which have been received in evidence, and the discharged shell casings and lead pellets, the pillow
686 slip, the pieces of bed sheet, jacket, and the pillow.

Mr. Papanek: Ladies and gentlemen of this jury. I am now showing you, for your inspection, People's Exhibit 11, now in evidence, a .22 caliber discharged shell casing, and People's Exhibits 12 and 13, which are also discharged shell cases.

(Jury looking at exhibits)

Mr. Papanek: And these, ladies and gentlemen, are Exhibits 15, 16 and 17, which are lead pellets that have been admitted into evidence, three in number. (Jury looking at exhibits)

Mr. Papanek: This exhibit, ladies and gentlemen, now in evidence, is People's Exhibit 18, which contains the discharged shell casings and the pellets that have been heretofore identified. (The jury looking at exhibit)

The Court: Those were the test shells?

Mr. Papanek: Yes. The next exhibit, ladies and gentlemen, is People's Exhibit 19, now in evidence, which shows the portion of the Albany Street door and the inside of that door, showing the lock as it has been heretofore described and identified. (Jury looking at exhibit)

687 (Whereupon following proceedings were had in chambers outside presence and hearing of jury.)

688 Discussion is had between Court and counsel as to the propriety of Mr. Papanek's characterizing these exhibits as they are shown to jury.

689 (Whereupon following proceedings were had in chambers, outside the presence and hearing of the jury, after discussion off the record, to wit:)

The Court: Let the record show the Court has sustained the objection of defense counsel and has instructed the State's Attorney when any other photographs in evidence are given to the jury for examination, at this or any other period, he will not accompany the handing, the manual handing of the photograph to the jury, with any explanation as to what it is intended to portray.

(Whereupon following proceedings were had in courtroom within presence and hearing of jury, to wit:)

The Court: The Court instructs you to hand the various photographs in evidence to the jury and simply identify them by number.

690 (Whereupon Exhibits 20, 21, 22, 23, 24 and 25 are shown to the jury. Whereupon with reference to the age of the defendant, it is stipulated between the defendant in his own proper person, counsel for the defendant, and the State's Attorney of Cook County, that the age of the defendant, Vincent Ciucci, Sr., is 28 years of age.)

(Thereupon, the State rested its case in chief.)

(Whereupon the following proceedings were had in the courtroom outside the presence and hearing of the jury, to wit:)

691 Mr. Doherty: I want to be heard on a motion for directed verdict.

The Court: You may proceed.

691-724 Argument by Mr. Doherty on motion for directed verdict.

724 (The motion for directed verdict is denied by the Court.)

725 (Whereupon said cause was recessed at 2 o'clock the same day, Tuesday, January 11, 1955.)

726 Tuesday, January 11, 1955
2 o'clock p.m.
Parties present: The same.

(Whereupon the following proceedings were had in the courtroom outside the presence and the hearing of the jury, to wit:)

727 Motion by Mr. Doherty. Mr. Doherty states that the indictment in this case is framed in four counts; one accusing the defendant of shooting with a rifle, one accusing the defendant of shooting, one accusing the defendant of murder by burning, and based upon the fact that there has been testimony adduced in the case in chief to the effect that the primary cause of death was carbon monoxide intoxication and that there is no showing of any human agency with reference thereto; Mr. Doherty moves that the Court enter an order requiring the State to elect as to which
728 count of the indictment they will proceed upon. Mr. Doherty further states that they have determined from the expert, Dr. Kearns, that a person can only have one primary cause of death and that in the testimony of Dr. Kearns he talked about the fatality of the concentration of carbon monoxide in the hemo-

globin of the blood and he said that would be fatal. He said the gunshot wounds would be fatal, too. Mr. Doherty states that there is nothing in the evidence about the burning and that the doctor testified that the primary cause of the death of Vincent Frank Ciucci, was carbon monoxide intoxication.

Mr. Papanek states that under the authorities, that the evidence, if all of the circumstances may tend to show by one or the other cause, the charge in each instance being that of murder, the same set of circumstances, the same occurrence, the same date, the same victim, then it is not necessary to be compelled
729 to elect. *People* v. *Stingley*, 414 Illinois. In that instance, the Supreme Court said no, it is up to the jury to decide if they feel it is this one or that one. It is up to them (the jury) for them to decide in this instance. Motion denied by Court. Mr. Doherty renews defendant's motion to consolidate this indictment with the pending indictment, 54-840, the *People of the State of Illinois* v. *Vincent Ciucci, Sr.*, and the Court denies that motion.

730 (Whereupon the defendant, to maintain the issues in his behalf, presented the following evidence:)

(Whereupon the following proceedings were had within the presence and hearing of the jury, to wit:)

JOSEPH BONOMINI, called as a witness on behalf of defendant, first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Doherty.

731 My name is Joseph Bonomini. I live at 5900 South Lee Avenue, Downers Grove. I lived there for five

years. I am here to answer a subpoena. I know Vincent Ciucci, the defendant in this case. He is the fellow in the blue suit. I have known him approximately fifteen years. I knew Vincent Frank Ciucci, the de-
732 fendant's son, during his lifetime. I saw him with Vincent, Sr., occasionally on Sundays. He would bring him down to the club. That is the Modest Recreation Club, 2421 South Western Avenue. At the times I saw Vincent, Jr., he appeared jolly all the time, seemed to be very satisfied.

Q. From your observations, sir, do you have an opinion as to whether Vincent loved his son, Vincent, Jr.?

733 Mr. Papanek: Object.

The Court: Let's step into chambers.

(Whereupon the following proceedings were had in chambers outside the presence and hearing of jury, to wit:)

Mr. Papanek states that whether the defendant loved his son is an improper question to be asked of any witness. The court states that he is going to let the witness answer. Mr. Papanek further states that with respect to reputation testimony all that a witness can state is whether the reputation is good or bad
734 without being permitted to bring out any specific instances. The court asks whether or not this witness is a reputation witness. Mr. Doherty states that what the defense is trying to do is to refute the motive in this case. He states that the State went far afield when they put on Carol Amora, that the State has established by their evidence enough for this jury to think in their minds that this person could kill his kids to be in the arms of this woman. He also states that Lt.

Murphy was permitted to give his opinion that there
735 were five fires. The Court states that he is going to let the witness answer.

(Whereupon the following proceedings were had in the courtroom within the presence and hearing of the jury to-wit:)

(Question read by reporter as follows: "From your observations, sir, do you have an opinion as to whether Vincent loved his son, Vincent, Jr.?")

736 The Witness: I would say he did.

Cross Examination by Mr. Papanek.

I am not a member of the bowling league that defendant participated in. The Modest Club was a club of grown ups, a club of men. I was a member. They have regular meeting nights. I was not there at night.

Objection by Mr. Doherty as being immaterial.

The Court: He may answer.

(Witness continuing)

I would come there on Sunday afternoon. That is
737 the only time I was there.

Q. Well, do you know about the Club, about there being a bowling league there; do you know that?

Mr. Doherty: Objected to. Immaterial.

The Court: He may answer.

The Witness: I know they have bowling set up there, but I never bowled with them. I do not know when they bowl from seeing Vincent there and from seeing the men in the Club. I would just be there oc-
738 casionally. That is all I know about the situation.

(Witness excused)

EMIL EVANGELISTI called as a witness on behalf of defendant, first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Doherty.

My name is Emil Evangelisti. I live at 2309 West 25th Street. I have lived there about ten years. I know the defendant in this case, Vincent Ciucci, Sr. I have known him around twenty-five years, since he
739 was three years old. I did, prior to December 5th, 1953, belong to social or athletic organizations with him. The name of the club is the Modest Recreation Club. They have a bowling league. I went bowling with Vincent Ciucci. I knew his son, Vincent Frank Ciucci. I had occasion to see him with his father. It was at a bowling alley at 26th and Oakley, McCormick's Bowl-
740 ing Alley. That would be around 8 o'clock at night. It was probably the first week in April. I saw him on other occasions at the same place. I know that Vincent Frank Ciucci use to come to this bowling alley with his dad and he use to mark the score sheet, sitting right down in the front seat with the fellows and I would occasionally see the child with a piece of candy or some soda in his hand and he would be playing around and writing on the score sheet. I would say that he appeared to be happy.

Q. Do you have an opinion, sir, as to whether the defendant in this case loved his son?

Mr. Papanek: Same objection.

741 The Witness: Yes, I do have an opinion.

The Court: He may answer.

Mr. Doherty: Will you state that opinion for the court and jury, please?

A. Yes, I do have an opinion. I think that Vincent Ciucci loved his son and his family.

(Objection by Mr. Papanek to the volunteered portion of the answer and order by court that it may be stricken and jury to disregard.)

(Witness continuing)

I knew his whole family. I recall that he brought his daughter with him on one of the occasions. It was sometime in the spring of 1953. That was at McCormick's Recreation Bowling Alley. I have an opinion as to whether or not Vincent Ciucci loved his family.

742 My opinion would be that he did love his family.

Cross Examination by Mr. Papanek.

In September of 1952 I think the defendant was living at 2413 South Western.

Q. Where was he living in October of 1952?

Mr. Doherty: Objection. Immaterial.

The Court: He may answer.

The Witness: I would say the same address.

(Witness continuing)

I would be telling a lie if I said I didn't know and I did know. I don't know truthfully but I do think he lived at 2413.

743 Q. Do you know where he was living in December of 1952?

Mr. Doherty: Objected to. It is far beyond the scope of direct examination.

The Court: He may answer.

The Witness: I wouldn't know.

Q. Do you know, sir?

A. Yes.

Q. Where?

A: 2413 South Western.

(Witness continuing)

I am not sure of that, I'm not sure of anything.

Q. Do you know where he lived in February of 1953,

Mr. Doherty: Objection.

The Court: He may answer.

The Witness: I don't know.

Mr. Papanek: Do you know where he lived in April of 1953?

Mr. Doherty: I object.

The Court: He may answer.

The Witness: I don't know.

(Witness continuing)

744 I belong to a bowling league with the defendant.
745 The bowling league bowled on Tuesday evening.

Q. And did you ever see the league that bowled on Thursday; did you ever follow that league?

Mr. Doherty: Objected to.

The Court: He may answer.

The Witness: League bowling Thursday, where?

Mr. Papanek: Well, I will withdraw it. If you don't recall that, I will withdraw it.

Mr. Doherty: I object to that speech, move that it be stricken and the jury instructed to disregard it.

The Court: It may go out and the jury instructed to disregard it.

(Witness continuing)

I don't know if I ever saw the defendant at a bowling alley on Thursday night.

Redirect Examination by Mr. Doherty.

One bowling team bowls on Tuesday. I have no occasion to go anywhere on Thursday.

(Witness excused)

JOHN VARRASSI called as witness on behalf of
746 defendant, first duly sworn, was examined and testified as follows:

Direct Examination by Mr. O'Donnell.

My name is John Varrassi. I live at 3042 West Flournoy. I live with my sister, my brother-in-law, Mr. and Mrs. Frank Valco, my brother, Gabriel, and my father, Joseph. I have lived at that address about twenty-five years. I am an accountant. I am employed by the Beardsley and Piper Company whose address is 2424 North Cicero. I have been employed there two years. I was with Hotpoint Company before that which is located at 5600 West Taylor.

Q. And how long were you with that firm?

A. Approximately two years.

Mr. Papanek: Object. Immaterial.

The Court: He may answer.

A. Approximately two years.

Q. And prior to that where did you work, sir?

Mr. Papanek: Same objection.

The Court: He may answer.

A. I was employed prior to that by the W. W. Kimball Piano Company for approximately four months as an accountant.

(Witness continuing)

748 As an accountant.

Q. And prior to that what did you do, sir?

Mr. Papanek: Same objection.

The Court: He may answer.

The Witness: I attended Loyola College of Commerce for three-and-a-half years.

(Witness continuing)

I graduated from there in 1950. I hold the degree B.S.C., Bachelor of Science and Commerce. I have been in the military service, in the army.

Q. Were you ever in foreign service?

Mr. Papanek: Object.

The Court: Objection sustained.

749 The Court: Let's step into chambers.

(Whereupon the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

The Court: What is the purpose of this line of interrogation?

Mr. O'Donnell: We do not at this time, your Honor, intend to reveal the nature of this witness's testimony.

The Court: The objection is sustained.

(Whereupon the following proceedings were had in the courtroom within the presence and hearing of jury, to wit:)

The Court: Let the record show the objection is sustained.

Mr. O'Donnell: Q. Mr. Varrassi, calling your attention to the early morning hours of December 5th, 1953, I ask you what, if anything unusual, occurred?

A. As I was putting my car in the garage, it was approximately 2 o'clock. I heard a noise, which sounded like a boom. Well, I didn't think very much of it. I continued putting my car in the garage, but immediately after hearing the noise I heard several
750 people, which led me to believe something had happened.

(Witness continuing)

There people were hollering or making some sort of noise, I continued to close my garage doors, the alley doors and then went on to close the side door and run out into the alley towards Flournoy—or Albany. I went across the street and noticed this building on Harrison and Albany was in flames. I ran east down the alley. This garage is located on the 3100 block of Flournoy on the north side. Flournoy is located one block south of Harrison Street. I was in
751 the alley between Flournoy and Harrison Streets, west of Albany. I proceeded in an easterly direction towards Albany Street, across the street to the east side of Albany. I looked around and saw this fire in the building on the corner of Harrison and Albany. The noise I heard was sort of a muffled boom.

Q. Could it have been an explosion?

Mr. Papanek: Object to leading this witness?

The Court: Objection will be sustained.

(Witness continuing)

With reference to the front entrance on the corner of Harrison and Albany, I noticed what appeared to
752 be the body of a man crawling out.

Q. And what did you do then?

A. He was lying, I don't know if he was crawling.

Objection by Mr. Papanek.

The Court: Step into chambers.

(Whereupon the following proceedings were had in chambers outside the presence and the hearing of jury, to wit:)

Mr. Papanek states that the witness made an answer and then indicated that that was a mistake and he asks that the answer be stricken. Mr. O'Donnell

states that the man is describing what he saw and that the Court has allowed the prosecution a great deal of latitude in their case. The Court states that the answer may stand.

753 (Whereupon the following proceedings were had in the courtroom within the presence and hearing of the jury, to wit:)

The Court: The answer may stand.

(Witness continuing)

After seeing this, I ran across the street and then helped another man that was there pick him up, pick up this body that was lying with his back face up—with his back on the ground, face up; pulled him out.

754 I believe he was lying half in and out of the vestibule at the time. Dragged him just a few feet and laid him on the corner sidewalk. I did not go directly into the vestibule. I may have stepped a foot into the vestibule. I didn't go into the vestibule. All I was noticing was the body lying on the ground. I was chiefly concerned with picking him up and getting him far enough away from the fire so he wouldn't be hurt. I did not see anybody else there. I did not recognize the person that was helping this other person out of the vestibule. I couldn't say whether he was white or colored.

755 Q. The person that you pulled out, what did you observe about him?

A. Well, he had his—

Mr. Papanek: Object to the form of that inquiry.

The Court: The objection is sustained.

(Witness continuing)

I recognize the person I pulled out. His name is Vincent Ciucci. I looked at him. His eyes were closed. He appeared as though he were asleep. I believe he had a few cuts on his chest.

Q. Did you notice anything about a plate glass door?

Mr. Papanek: Object to leading the witness, if the Court please.

Mr. Doherty: I object to this uncalled for whining as he voices an objection, if the Court please. The tone, inflection of it, as if he were wounded.

756 The Court: Let's step into chambers.

(Following proceedings were had outside presence and hearing of the jury, to wit:)

The Court: First of all, there is one pending objection that the Court is aware of that was made to the question that was put by the examining attorney that we will rule on now.

(Question read by reporter)

The Court: The objection will be sustained as to form.

Mr. Papanek: And also made specifically as leading, if the Court please, leading this witness.

The Court: He may ask what, if anything, he noticed with reference—what, if anything, he noticed
757 with reference to the front door. Now, as to the other objections.

Mr. Doherty: Your Honor, I don't like to be obstreperous, but when Mr. Papanek has an objection he should say to your Honor, "I object." Now, you have ruled on that before this. I object to this long, lengthy explanation in this wounded expression, as if someone stuck a knife in his back.

The Court: The Court will not rule as to the objection at this time. I believe that both counsel have endeavored to refrain from exhibiting their feelings as we have gone along. This has arisen during the cross examination, during the State's case, and at that time we went into the matter and the Court, at that time, made no ruling that was obvious to the jury. I suggest that both of you try to refrain yourselves. Make this off the record.

(Whereupon a discussion was had between Court and counsel off the record, after which the following proceedings were had in the courtroom, within the
758 presence and hearing of the jury, to wit:)

The Court: The objection was sustained and Mr. O'Donnell, you can rephrase your question.

(Witness continuing)

With reference to the door of the vestibule, I noticed that it had been broken; that is, I noticed some glass, broken glass. That would be the inner door, the door that leads into the store. I stated that I and this other person laid him on the sidewalk.

(Witness is asked to step down, take the pointer and indicate to the Court and jury exactly where on the sidewalk he laid him. Witness stepped down from the
759 witness stand.)

I laid him right on the corner (indicating), right on the tip at the extreme southwesterly portion of the sidewalk. I don't know which portion it is on. I just laid him there, it was away from the door.

(Witness resumed the witness stand)

760 Mr. O'Donnell: Other than the person you mentioned who helped you, did anyone else help you lay him on the sidewalk?

A. There was just two of us.

Q. You and this other person that helped pull him out, is that right?

A. That's right.

Mr. Papanek: Object to the form of that inquiry.

The Court: The objection will be sustained.

Mr. O'Donnell: Did you ever make these facts known to anybody?

A. Yes, sir.

Q. To whom?

A. Well, to you, Mr. O'Donnell, and Mr. Doherty.

Q. Besides Mr. O'Donnell and Mr. Doherty?

A. I made a statement at the Marquette Police Station.

Q. When, if you recall, did you make such statement?

A. It was in December, Christmas week. I believe it was three days before Christmas.

Q. Do you recall to whom you made that statement?

A. I can't recall the name, no, sir.

Q. Was that statement taken down?

A. Yes, sir.

Q. Did you sign it?

A. Yes, sir.

Mr. O'Donnell: You may cross examine.

761 Mr. Papanek: May we have a moment, your Honor, for recess.

(Whereupon the following proceedings were had outside the presence and hearing of the jury, to wit:)

(At Mr. Doherty's request the witness is instructed not to discuss the case with anyone during the recess and the Court instructs him not to talk to anyone during the recess.)

(Whereupon a ten minute recess was had, after which the witness was recalled and the following proceedings were had within the presence and the hearing of the jury, to wit:)

762 *Cross Examination by Mr. Papanek.*

When I came to Albany Avenue, I was south of Harrison and on the east side of Albany.

Q. In other words, you were right here at the alley, sir? (indicating)

A. Approximately right there, yes, sir.

(Witness continuing)

Directly across the street from the alley as you come onto Albany, there is a vacant lot and next to that is a small store. It was a trucking concern and this fellow has his office there. That is Russell. And
763 beyond that is the store or the portion of the building which I found on fire. The first thing that attracted my attention after I came out onto Albany was the fact that there was fire coming out of the building. I noticed fire in the building. I recall a half-moon window on the side of the building. I don't recall for sure whether or not there was fire or smoke coming out of that particular opening. The next thing I saw
764 was this body lying on the ground. I was still about in the alley. I was still across the street. I did not see or hear anyone break the glass of the front door. From what I could see at that point the windows, the plate glass windows of the store were intact at that time. When I went over to the front of the building I noticed then that the plate glass windows of the store seemed to be intact, as far as I can remember. The person who was there in that place where I saw the defendant for the first time, I don't know whether

he was a white man or a colored man. At that corner
765 I believe there is a light across the street. I did not look at the person at all.

Q. Do you know, or have you since heard of a man named Charles Fellows?

A. Yes, sir, I have.

(Witness continuing)

I don't know whether it was Charles Fellows. I have since heard of a person named Anthony Riccobene. I don't know whether it was Anthony Riccobene. I don't whether or not at the time I came to that corner one or the other were still in the vestibule. It could be. I guess I stayed there until the fire was out and a
766 little time after that.

Q. Where did you go after you were with the defendant at the corner, where you say you put him down, sir?

Mr. Doherty: I object. We would like to be heard on this.

(Whereupon the following proceedings were had in chambers outside the presence and hearing of jury, to wit:)

The Court: Please state the objection.

(Question read by reporter)

Mr. Papanek: In other words, I am not talking about any other day, I am talking about that day.

The Court: This is off the record.

(Whereupon a discussion was had between Court and counsel off the record, after which the following proceedings were had in chambers outside the presence and hearing of the jury, to wit:)

767 Mr. Doherty states that this goes far beyond the scope of direct examination; that he has testified to a certain given set of facts. He further states that

the defense has been restricted throughout the trial by the very same objection being raised by the attorney for the prosecution in this case, where the defense has been precluded from questioning, Matsuoka, who simply walked from ward 15 to the County Morgue. He states that the defense was not permitted to go into that testimony, that he asked "How long were you on duty?", and it was after the incident at the morgue, and that he was precluded from doing so and that the instant question is beyond the scope of direct examination.

Mr. O'Donnell states that the defense was also
768 restricted in their examination of Irwin Block and Officer Roy Triner. Mr. McGovern states that any event that took place there in the County Hospital at the time that this defendant was being interrogated, counsel had every right to go over. He states that the State has a witness on the stand who testified to being present all during the time of the fire and that the State has a right to go over every thing he did at that particular time and at that particular place. The court rules that the witness may answer.

(Whereupon the following proceedings were had in the courtroom within the presence and hearing of the jury, to wit:)

The Court: He may answer.

(Question read by reporter as follows: "Where did you go after you were with the defendant at the
769 corner, where you say you put him down, sir?")

A. Well, I looked into the building and considered it too dangerous to enter.

(Witness continuing)

I went to the side door on Albany.

Q. Now, did you see anything happening at that Albany Street door, Mr. Varrassi?

Mr. Doherty: Objected to.

The Court: He may answer.

The Witness: There was another fellow who was pounding the screen door to see if he could get into the building.

(Witness continuing)

He pounded on the screen door with his hand. I saw the screen door had opened. This fellow proceeded to pound on the door to see if he could open it. I noticed the door. I can't remember what
770 kind of a door it was. I believe there was some metal on it. I didn't notice any handle on the door from the outside. A lot of people had congregated at that time. There were about, I would say, three or four of us fellows trying to pry that door open by kicking it. One fellow threw his body against it and then proceeded to kick it. I was one of the fellows trying to force the door open with those other people.

Q. And did you see a big man there who would kick at that door?

Mr. Doherty: Objection.

The Court: He may answer.

The Witness: Like I say, there was a few of us and one was big. I don't know how big he was, I know he was bigger than me.

771 (Witness continuing)

He kicked it open. The door finally gave and opened. I noticed a mass of flames coming out of the door. When that door was kicked open or

forced open, that was not the first time that I saw flames around the Albany Street door. I had seen flames before that when I came out of the alley.

Q. Coming through that metal door?

A. If I remember correctly there was a transit (transom) above the door.

(Witness continuing)

I believe I saw smoke and flame coming out of
772 there. The door itself was closed. I and these other people were throwing ourselves at that door and finally forced it open. I believe there was this bed there. I didn't see anybody on that bed. I wasn't looking too well. One of those men who was there with me and trying to force this door open said
773 "give me a coat". He wanted my coat. I said, "what's the matter, man, are you crazy". I don't know who that person is. I can't say whether or not that person was Anthony Riccobene.

Q. You couldn't say it wasn't him, could you?

Mr. Doherty: Objected to.

The Witness: A. No.

The Court: He may answer.

Redirect Examination by Mr. O'Donnell.

I did not give my coat to the man that asked me for it. He did not take my coat and run in there. I can't remember whether or not I saw anybody grab him by the neck and pull him back.

Q. Mr. Varrassi, did you make all these facts known to the police?

774 Mr. Papanek: Objected to as being improper redirect examination.

The Court: He may answer.

The Witness: Yes, sir, I did.

Mr. O'Donnell: And, when was that, sir?

Mr. Papanek: Objected to as having been answered.

The Court: He may answer.

The Witness: December of 1953, I believe it was the 22nd.

Q. When was the first time you saw Mr. Doherty or Mr. O'Donnell?

Mr. Papanek: Objected to as being not proper redirect examination.

The Court: He may answer.

The Witness: Early fall, I believe it was, of 1954.

Q. Had you talked to anybody from the police
775 department from December, 1953, until today?

A. No, sir.

(Witness excused)

(Whereupon a discussion was had between court and counsel, outside the presence and hearing of the jury and court reporter, after which the following proceedings were had in the presence and hearing
776 of the jury, to wit:)

Both the State and the Defense rest.

776-797 Final argument to the jury by Mr. Papanek.

797 (Whereupon a ten minute recess was taken).

797-842 Final argument to the jury by Mr. Doherty.

842 (The jury is recessed for dinner and instructed
843 by the court not to discuss the case among themselves until it is given to them finally for their deliberation.)

844 (Whereupon a recess was taken to 7:30 o'clock P.M. of the same day).

845 Tuesday, January 11, 1955.
Evening Session, 7:30 o'clock P.M.
Parties present: The same.

(Whereupon the following proceedings were had within the presence and the hearing of the jury, to wit:)

845-855 Final argument to the jury by Mr. O'Donnell.

855 **Mr. McGovern: May it please the Court, counsel, ladies and gentlemen of the jury.**

I, as Mr. Papanek, and counsel who have preceded me, wish to thank every one of you ladies and gentlemen of the jury for the attention which you have paid to the evidence as you heard it during the course of the trial.

I might say to you at this time that the State is given this opportunity at the close of the case to answer anything that defense counsel might have brought up in their argument.

I might further say to you at this time, in commenting upon the evidence, if I say anything in my comments that isn't borne out by the evidence as you ladies and gentlemen remember hearing it from that
856 **witness stand up there, then please disregard what I say and make up your verdict in this case on the evidence as you remember it.**

We heard a great deal of comment by defense counsel and it brought to mind the old adage that you hear around the courtroom, that if the evidence isn't with you, then talk about the law, and if the law isn't with you, then talk about the evidence, and if neither one is with you, then badger and vilify and

belabor and accuse the police department, the State's Attorney's Office and every single witness that took that stand.

If the evidence isn't with you and the law isn't with you, you have been framed. If you can't explain the evidence, it has been planted. What else can they say happened?

They talk about Lieutenant Gibbons and Roy Triner; they talk about the witness Riccobene, who has been in the penitentiary, as part of the frame. Certainly, didn't they do a poor job in this case. And when you heard counsel here talk about Mr. Fellows, that he couldn't identify the defendant in this case, you
857 remember his testimony ladies and gentlemen, you remember him taking that witness stand and when asked if he knows who the man was that he took out of that vestibule and what he did, didn't he point to this defendant and say, "That's the man", indicating Ciucci?

Riccobene was certainly a poor frame, wasn't he? If you recall the testimony, ladies and gentlemen, he couldn't identify him, didn't know who the man was, didn't even attempt to in this courtroom. What a poor frame witness he was. If they wanted him to get on that stand and lie, or if anybody did, the State's Attorney's Office or anybody else, don't you think he would have said a lot more.

And Officer Roy Triner of the 23rd District, they say that they planted those cartridge cases there. What else can they say, ladies and gentlemen; what else can they say?

Mr. Doherty: Just a minute, we didn't say that.

Mr. McGovern: They commented about the 23rd District.

Mr. Doherty: Let's be fair in the argument. May we be heard?

The Court: I don't think it is necessary. You may
858 proceed.

Mr. McGovern: If you recall counsel's argument, he talked about the 23rd District, which indicated to my mind, I believe, the 23rd Police District of the City of Chicago and the officers connected there, and he told you about the cartridge cases that were found there in the kitchen, in the rear bedroom, and what else can they say about those cartridge cases, ladies and gentlemen?

They were fired from the gun that this defendant borrowed from Caruso, the gun, ladies and gentlemen that he had, in fact, never borrowed before, and those cartridge cases match up with that gun. What other answer is there?

And he talks about them being found in the kitchen. You ladies and gentlemen don't have to leave your common sense. You know that one was found in the bedroom. You know the fire department was there, and they put out that fire. You know they stretched the fire hoses all over the place.

Mr. Doherty: That is not in the evidence. I submit that is an unfair comment.

The Court: He may proceed.

859 Mr. McGovern: They talk about the 23rd District framing the case. They talk about Lieutenant Gibbons framing the case. Didn't he do a poor job? Didn't he

do a poor job? He could have come in here and said, "That's the man." He could have had a confession and witnesses to say this, to put a finger on this defendant. You could have had any number of things. He could have gotten on the stand and said, "Certainly he made a confession in this case and this is what he said—"

Mr. Doherty: Objected to, if the Court please. Are we going to talk about the evidence and the law or are we going to talk about a million things outside of the issues.

The Court: Let's step into Chambers.

(Whereupon, the following proceedings were had in Chambers, outside the presence and hearing of the jury, to-wit:)

The Court: What evidence was there about a confession, Mr. McGovern?

Mr. McGovern: Judge, this counsel is accusing officers of the Chicago Police Department of planting
860 evidence at the scene of this fire, framing this defendant.

Mr. Doherty: Absolutely.

Mr. McGovern: If that is their argument, I am entitled to comment upon what they said.

Mr. Doherty: Based upon the evidence.

Mr. McGovern: I am saying what they could have done.

Mr. Doherty: They are conveying to the jury the idea that they have these things available.

The Court: Let's read it back.

(Record read by the reporter.)

The Court: The Court feels that the inference there is unfair—strike out the word unfair—is im-

proper, an improper comment on the evidence that has been received in this case because of the possibility that may arise in the minds of the jury when you say he could have done all that and you get into the realm of a confession.

The Court feels that it is too important in this case, particularly to permit the comment or inference to be raised from what anyone could have done, particularly the police department.

Mr. Papanek: Judge, may I make an observation,
861 if the Court please.

In counsel's argument, and you will acknowledge that both Mr. O'Donnell and Mr. Doherty spent two-thirds of their argument on the frame. Now, surely Mr. McGovern has only one right in this instance and that is to answer.

Mr. Doherty: From the evidence and the law.

Mr. Papanek: Why wouldn't he, in view of the fact that they dealt on the matter of a plant, Judge, why wouldn't he have the right to say, "Why, if he wanted to frame him, why couldn't or wouldn't he have done so and so?" Isn't that a logical answer?

Mr. Doherty: No.

The Court: But in this instance he said he could have.

Mr. Papanek: You are concerned with the choice of words?

The Court: The choice of words is what the Court is talking about.

Mr. Papanek: I apologize, I didn't understand that was your Honor's thought.

The Court: To me, the choice of words in this instance is most important.

Mr. Papanek: That clarifies it, your Honor.

862 Mr. Doherty: Now, if I may be permitted to make a comment, your Honor, I submit that if he goes out and uses synonymous terms, he'll magnify it.

The Court: We will strike that last sentence.

Mr. Papanek: In other words, Judge, so we understand your Honor, in answer to both counsel, if Mr. McGovern said, "Why ladies and gentlemen of the jury, if Lieutenant Gibbons was going to or had intended to frame this defendant, don't you think—"

Mr. Doherty: That's the same thing.

The Court: I am sustaining it on the basis of the words "could have".

Mr. Doherty: I would like your Honor to instruct the jury.

(Whereupon, the following proceedings were had in the Courtroom, within the presence and hearing of the jury, to-wit:)

The Court: Let the record show the objection to the last sentence of Mr. McGovern has been sustained.

Now, for the purpose of the record, and for the information of the jury, read that last statement, please.

863 (Record read by the reporter as follows: "He could have come in here and said, 'That's the man.' He could have had a confession, and witnesses to say this, to put a finger on this defendant. You could have had any number of things. He could have gotten on the stand and said, 'Certainly he made a confession in this case and this is what he said—'")

The Court: The objection to that portion is sustained and the jury is instructed to disregard it. You may proceed, Mr. McGovern.

Mr. McGovern: If Lieutenant Gibbons, ladies and gentlemen, or anybody else wanted to frame this defendant, if they wanted to plant things, if they wanted to put him in, if they wanted to frame him, they would have done a much better job. Don't you think they would come in here with confessions, putting the finger on him and say he did it, with any number of witnesses, and planting more cartridge cases in there?

Mr. Doherty: Object, your Honor, there is no con-
864 fession in this case. Counsel knows that.

The Court: Let the record show there is no confession in this case. You may proceed, Mr. McGovern.

Mr. McGovern: If Lieutenant Gibbons or anybody else at the 23rd District wanted to frame this defendant that badly, don't you think they would have come in here with bullets that they could identify were fired from that gun? Don't you think they would have come in here with more cartridge cases? Don't you think they would have come in with evidence of gas cans or any other things that would start a fire, if they wanted to frame this defendant? And can you imagine a police lieutenant, a police officer, who is supposed to be so skillful, that puts the two cartridges out in the kitchen? He isn't so smart, is he? If he wanted to frame this defendant, ladies and gentlemen, you know you would see more evidence in this record.

We say, thank God for Lieutenant Gibbons and Officer Roy Triner and the rest of the officers of the 23rd District. Officer Triner's shoulders are broad; Lieutenant Gibbons' shoulders are broad.

865 How many times have you come into a courtroom and how many times have you listened to the same old thing. We can't answer it in the evidence; no way

out; put it on the police officers, put it on those men who go out every night in their district, eight in the morning to midnight or—

Mr. Doherty: We are not talking about that kind of men, we are talking about the ones who lay in their bed from two o'clock in the morning until—

Mr. McGovern: We have a right to proceed.

The Court: Mr. Doherty, you will refrain from those comments, please.

Mr. McGovern: I say, ladies and gentlemen, thank God for officers like Officer Triner, Lieutenant Gibbons and the rest of the officers from the 23rd District. I am proud to be associated with them in this case or any other case.

They talk about Officer Neville going to the scene and seeing a gun there and not disturbing it. If you think of the way this defendant planned this crime, the way he had it thought out, the accuracy with which the bullets were placed in the heads of the deceased in this case, the bullet right between the eyes of his
866 wife and the children, and then attempting to destroy those bodies—and who knew there were any bullets in anybody's head until the heads were opened. Who knew that until Dr. Kearns opened up those brains, opened up those heads and probed until he found the bullets? Who knew there were any holes in the heads and there had been bullets fired into them until that time?

And then when this defendant is questioned, when Lieutenant McMahon told you about his being questioned in the County Hospital and he was asked about owning or having a gun, is there any testimony—strike that.

When Lieutenant McMahon told you he asked him about the gun, did this defendant at that time say to

him, "Yes, there is a gun out there"? Did he say, "Go out and get it, it is in the wardrobe"? Did he say that, ladies and gentlemen?

Then Earl Downs from the Corporation Counsel's Office came over there and in the presence of this defendant and Lieutenant McMahon said, "Frank Grady says there is a gun out there". The same Frank Grady who Officer Neville testified was with him around noon on December 5, 1953.

867 And then this defendant's tune changed, didn't it? Then Mr. Bloch and State's Attorney Gutnecht, who according to counsel, would have to believe that he and everyone else is a part of a giant conspiracy to frame this defendant, asking leading questions, asking questions over and over and over again.

Is there anything contradictory or a denial in this record, ladies and gentlemen, that this defendant made the statement, People's Exhibit 10, which is now in evidence and which has been read to you? Is there any contradiction or denial in this record, that this defendant said the things that are contained in this statement?

And they talk about a lapse of memory. They talk about a survival case and they would have you believe or like to have you believe that Dr. Kearns said from that witness stand that this defendant was a survival case. You heard his testimony. He told you about a person being exposed to smoke and having damage to the motor areas of his brain, that he would have "shakes", he would have a disease after that. Did you ever see this defendant shaking? Is there any
868 testimony in this record about him shaking?

Memory lapse. You heard that statement read into evidence, ladies and gentlemen. You heard how he told State's Attorney Gutknecht and Irwin Bloch and Coroner McCarron all about the house, how many windows there were in the house, how many rooms there were in his house, what the entrances were. He told them all the windows had bars on them, told them that he remembered that everything was locked, the front door. Memory lapse, when he told them about the events, he knew that the police knew about the gun; when he told them about seeing Frank Caruso that same night; when he talked about going over to Caruso's house at around six o'clock, even to the detail of going down into the basement with Caruso, with Caruso's wife and Caruso's son, and coming up again in the apartment.

Memory lapse when he was talking about working for Russel, when he was talking about how much money he was getting from Russel. Was his memory lapsing when he said he wasn't going to work that next day, on that Saturday? But they would have you believe, ladies and gentlemen that he was a survival
869 case with a memory lapse.

And is it contradicted or denied in this record in any way, that when Bob Smith, Assistant State's Attorney Robert Smith went over to the Bridewell Hospital with Officer Burton, that this statement was read to this defendant, and that he had a copy of it and he also read it, and that as Mr. Smith went along that he would stop him from time to time and tell him where a correction should be made, and that the corrections were made and that the defendant affixed

his signature to the state? Is there any contradiction or denial of that in this record?

Memory lapse. This defendant had an opportunity to change anything he wanted to in that statement, ladies and gentlemen; you know that.

They talk about Varrassi and say he was concealed by the 23rd District. You know that every witness who was ever interviewed in this case is part of the files, part of the State's Attorney's files. You know that we could call witnesses to that witness stand from now until next summer.

870 Mr. Doherty: I object to that, if the Court please. If they had witnesses to show anything, they should have brought them in here or suffered the consequences of not bringing them in.

Mr. Papanek: Object, if the Court please.

Mr. McGovern: Object to the speech of counsel.

The Court: Let's step into Chambers.

(Whereupon, the following proceedings were had in Chambers, outside the presence and hearing of the jury, to-wit:)

Mr. Papanek: I would like to make another point right now.

The Court: You may make your point, Mr. Papanek.

Mr. Papanek: Judge, it is the law of our land, to begin with, that the State is under no obligation to produce any witnesses in the trial of a case. Under no obligation, even if they were eyewitnesses to the offense. That is the law of our State and when Mr. Doherty makes that statement, your Honor, that we are obligated to produce every witness that we ever

talked to or suffer the consequences. I object to it and I ask that this jury be instructed to disregard that statement.

871 The Court: Read back the statement of Mr. Doherty.

(Record read by the reporter.)

Mr. Doherty: Your Honor, may we have the judicial recollection refreshed at this time as to what we consider to be a grossly unfair comment preceding that.

The Court: Yes.

(Record read by the reporter.)

Mr. Doherty: Judge, I submit, that is grossly unfair, your Honor. As soon as this man Varrassi was recognized—and incidentally, your Honor, he was recognized by the Turco family—Roy Triner come running over and—

Mr. Papanek: Are we going to discuss this objection now?

Mr. Doherty: And they didn't have that in their files at all.

The Court: Address your remarks to the statement made by Mr. McGovern.

Mr. Doherty: All right, your Honor. They say they could call witnesses in this case until next summer. Why, what could be more grossly unfair than that, Judge.

Mr. McGovern: In finishment my comment, your
872 Honor, the finish of that is, "We could call them from now until next summer if we called every witness who was ever interviewed in this case or whose name we had in our file." We are under no obligation to call any witness in this case, if we can't vouch for his credibility.

The Court: The Court feels this way; that the statement that you would spend so much time in calling witnesses is not borne out by the testimony in evidence. The Court also feels that the comments of Mr. Doherty were improper at the time. If the Court makes a ruling, the Court will direct the jury to disregard both statements, or would you rather the Court make no ruling at all?

Mr. Doherty: I would prefer a ruling, your Honor. I am worried about it. Let's have his unfair comment stricken for the reason that it would raise an inference in the minds of the jury that they do, in fact, have that many witnesses and then strike my comment, as well.

The Court: All right, let's proceed.

Mr. Papanek: The only objectionable part that I can see, in all fairness, is that we could call them from now until next summer, but surely we have the
873 right to comment on the point that there were many witnesses interviewed.

Mr. Doherty: I object. It is not in the evidence. There is no showing in the evidence.

Mr. Papanek: There were twenty-five firemen on the scene, alone.

Mr. Doherty: Just a minute, there is no showing in this evidence under oath, your Honor, that anybody was interviewed and I object to it.

The Court: This Court believes and feels that there is no evidence in the record as to how many people were interviewed in addition to those who have been placed on the witness stand, so that those comments directed to that point by Mr. McGovern are not borne out by the testimony within the case. Therefore, the

objection will be sustained as previously stated and the Court will direct that that one sentence that we have referred to be stricken from the record without any further comment, and also that the remarks of Mr. Doherty be stricken from the record and disregarded by the jury.

Mr. Doherty: Both of them disregarded by the jury, is that correct?

The Court: That's right.

874 (Whereupon, the following proceedings were had in the courtroom, within the presence and hearing of the jury, to wit:)

The Court: The Court sustained the objection to the remark of Mr. McGovern and would like the Court reporter to read that portion that the Court has sustained the objection to.

(Record read by the reporter as follows: "You know that we could call witnesses to that witness stand from now until next summer.")

The Court: The objection to that remark is sustained and the jury instructed to disregard it. Now, read the comment of Mr. Doherty.

(Record read by the reporter as follows: "I object to that, if the Court please. If they had witnesses to show anything, they should have brought them in here or suffer the consequences of not bringing them in.")

The Court: The Court sustained the objection to those remarks and directs the jury to disregard them.

875 You may proceed.

Mr. McGovern: Thank you, your Honor. Excuse me, ladies and gentlemen, I am just getting my train of thought again.

This witness Varrassi, what did he tell you in this case that you ladies and gentlemen didn't know already? He told you about coming down Albany Street by the alley, around Russell Movers. He said he never went into the vestibule, said that he was the man—

Mr. Doherty: Object to that, if the Court please.

The Court: The jury will recall what the testimony was regarding the vestibule by the witness, Varrassi.

Mr. McGovern: Ladies and gentlemen, may I again remind you that if I say anything in commenting on this evidence that isn't borne out by the evidence, please disregard it, and make up the verdict on the evidence as you hear it.

Varrassi said that he didn't know who the man was that he was assisting, whether he was white or colored. And didn't he say when he got there he saw that the glass in the front door was out? The same way Riccobene and Fellows both said it was. Didn't he say the man was taken out to the curb, this de-
876 fendant, Ciucci, the same way Fellows told you he was? And didn't he tell you—and ladies and gentlemen, if you remember the cross examination in this case in the early stages of the trial when the questions were coming, wasn't the outside of the door badly burned? And wasn't the outside more badly burned than the inside? And in the first place, remember the testimony, that the door was steel?

All of Varrassi's testimony, what did he do but corroborate again and again everything that Riccobene and everything that Fellows said. He told you that he went around to the side door on Albany

Avenue; that there were men there and there was one who was pushing up against the door and he told you that a bigger man came around and they all started kicking, and Riccobene said the same thing, didn't he? That they started to kick at the door and finally the door came open.

And remember this significant point, ladies and gentlemen. When he was asked by Mr. Papanek, "Did a man ask you for your coat?" "Yes, he did". What did Riccobene say about that? And did he ask, "Didn't you say to him, 'are you crazy'" or some
877 thing like that? What did Riccobene say about that? That that door was locked, securely closed, that both doors were locked.

You remember the cross examination about the damage to the door? About the damage to the screen door and about the damage to the inside door?

And what else did Varrassi tell you that corroborates the testimony of the other witnesses in this case? Didn't he tell you about the flames and smoke shooting out the transom above the Albany Street door? Didn't he tell you about the flames enveloping that rear bedroom? What did Captain Conte say about this? Didn't he tell you about that fire being concentrated and the flames enveloping the rear bedroom where the body of Mrs. Ciucci lay in the bed, and in the rear bedroom where the bodies of the two children, or three children lay in bed?

Did he add anything by his testimony? And when they talk about the fire and where it was, you recall the testimony of Lieutenant Gene Murphy. He told you that he went there, that he has been a fireman

for a great number of years and has been to thou-
878 sands of fires, and that he looked around in the two rear bedrooms and he told you where he found evidence of five separate and distinct fires, where the wood had been charred deeply, and where there were clear spots around them.

And where did he say they were, ladies and gentlemen? At a place where children throw their clothes? What other answer can they make to that? Where children throw their clothes. Where? At the Albany Street door? Where children throw their clothes just north of the bed in which the body of Mrs. Anna Ciucci lay? Children throw their clothes in the entrance to the rear bedroom, which is the only avenue of escape from that bedroom? Over against the side wall? And most significant of all, under this bed (indicating) Under the bed where the two bodies of the little girls lay? Under the bed where the body of the one little girl was burned so badly, so badly consumed by that fire, almost beyond any recognition at all. Even to the point where one fireman said he couldn't tell whether it was a boy or girl; just that it was a child.

879 You don't have to be a man with a great number of degrees, a very learned and brilliant person, if you are a hard working fireman like Lieutenant Murphy and have been to the number of fires he has.

And they talk about the fire in the two rear bedrooms and that the fire was all high. Was the fire all high, ladies and gentlemen, when there was one under the bed, and where the bodies were being consumed? Was the fire all high in those premises where

the body of Mrs. Anna Ciucci was so severely consumed by the fire, where she was burned so badly, as Captain James Conte testified to? And how about Fireman's Corboy's testimony. Was that a high fire, when the bed is burned, when both beds are burned?

Where was that fire concentrated? If you look at the picture, People's Exhibit 24, for identification, which is the entrance looking into the two rear bedrooms, what do you see about the top and what do you see about the bottom? Can you see that, ladies and gentlemen? With relation to where that fire was concentrated, what do you see about the burning of the wood on the entrance to the kitchen? Is that
880 burned badly and is that charred?

You know, ladies and gentlemen, where that fire was concentrated. Even the wardrobe out in that kitchen, was that burned or charred? You have seen the picture of the wardrobe in the kitchen.

A flash fire? A flash fire that burns the door frame on the Albany Street door the way this did, deep into the wood? Any why, why was that fire concentrated in those two rear bedrooms? You know why, ladies and gentlemen; because this defendant had planned a perfect crime. This defendant had put something together that almost was a perfect crime, getting the gun, going into those bedrooms as he did, and scrupulously avoiding in his statement talking about anything, except for the fact he went to bed.

Now, can you envision this? It is uncontradicted and undenied in the evidence, he says in his statement that he was working with his son around the

premises, that the two little girls went to bed earlier that night, that his son went to bed some 45 minutes or a half hour later; that would be sometime around 10:15 or 10:30. That his wife then went to bed and
881 he even told in that statement what side of the bed she was sleeping on, on the side towards Albany Avenue, and he talked about in that statement, he said he stayed up for a while and smoked.

Then he read the paper and joke books and then he went to bed. And where? To bed with his wife in that same bedroom. And he said, was she asleep, or words to that effect, and he said she asked him, "did you set the clock", and he said, "Yes, I did" or words to that effect, and that he went to bed. And he was asked, "Did you go to sleep right away?" "Oh, God, no."

So he would have to believe then that he was in that bed with his wife and his wife was lying right alongside of him and that he was sleeping and that four bullets were pumped into the head of his wife and three kids, in an inclosed room with the doors shut, the plate glass windows in and all the rest of the doors, with the windows barred; four bullets into their heads and he didn't hear it. He didn't wake up. The premises on fire. You know that's not true, ladies and gentlemen.

You know that there was nobody else in that room
882 but this defendant. And why? What was happening right around this time? Was Carol Amora something that was picked up to spin a web? Was Carol Amora also manufactured by the 23rd District and brought in? He loved his children? Did he love his children when he was going out with Carol Amora, and take

her to some ritzy club someplace and saw her three and four times a week? Did he love his children when he was borrowing all the money, $1300 in all from Carol Amora to buy a Cadillac? Did he love his children then?

Did he love his children, ladies and gentlemen, when he was spending six or eight months away from home living with Carol Amora? Did he love them then? Did he love them that time?

And in the month of December, leading up to that, when Carol Amora had a baby, his baby, and when she told him again in November that she was pregnant again, she went to the doctor and found out that she wasn't. She didn't tell him that. And he told her repeatedly, constantly that he was going to get a divorce because his wife couldn't satisfy him and he wanted Carol Amora.

And he finally told her, "I've got a divorce" and
883 she said, "Let me see the papers, bring the papers." When was that? The first of December.

And they talked about the furniture, about getting married, looking through ads in the paper for used furniture, saving money, getting an apartment. What was running through his mind at that time? Was he thinking of this; that she is going to have another baby now?

Who did he want more? Who did he want more all the way through this case, since the start of it; Carol Amora, or did this boy, this twenty-eight year old killer—

Mr. Doherty: Object to that.

Mr. McGovern: Not a boy. Who did he want? Who does the evidence say he wanted, ladies and gentlemen?

They talk about the shells. He had a pretty good memory on that, too, when he talked about getting the gun, if you recall the statement. What kind of a gun was it? He described it to Mr. Bloch, telling him how to load it, telling him how the thing fires, and as Mr. Bloch mentioned something about repeater action, he says, an automatic. And telling
884 Mr. Bloch that the gun worked automatically with the particular type of shells he got from Caruso. You know he knew about that gun. You know he knew how to fire it. He himself told Mr. Bloch, State's Attorney Gutknecht and Coroner McCarron what kind of bullets he got. And he talked about the gun, about pulling a thing up, pulling it back, returning the slide, then it works automatic, it goes, bang, bang, bang, bang. He knew what kind of a gun he had and he knew what kind of bullets he had.

They talk about Dan Dragel bringing in exhibits. Wasn't it in the evidence that one of the pillows was covering the head. A pillow, a blood-soaked pillow on the head of the boy and one under his head. Wasn't it in the evidence that there was a blood-soaked sheet. If we didn't bring them in, wouldn't we be wide open for the argument, "Well, what is that material on those sheets and on that pillow? What have they shown you, they with their crime lab."

What would you think of us if we didn't bring to show you and tell you what it is.

And the fact that this defendant was living with Carol Amora, didn't that remain uncontradicted and
885 undenied in this record? And the fact that she told him she was pregnant again in the month of November, was that undenied or uncontradicted in this record? The fact that his wife had a summons against him to pay for separate maintenance to pay for his children, for this boy's beloved children, isn't that undenied and uncontradicted in this record?

Ladies and gentlemen, you've got the case here as jurors, one of the most atrocious, vicious, heinous crimes that your minds or memories could ever envision or hope to imagine. You've got a defendant who had good reason to plan this thing out in detail, how he would get rid of his people.

You've got a defendant that almost got away with it, a defendant who after he shot them with that gun, after placing it against their heads—and wasn't his aim good? Through the heads, one bullet between the eyes.

What if Riccobene hadn't happened along, and what if he could have stayed in that front door a little longer, kneeling up close to the door, as was pointed
886 out, where there was no fire up there, breathing as well as he could until those bodies had been consumed, and Mrs. Ciucci's body was just about split open and her arms were up and her legs bent over the bed.

And isn't it significant, also; that her body was stretched out across the lower portion of it? You know that nobody was in that place. And you know that when she got shot, she was either standing along-

side the bed, maybe hearing those bullets crashing through the skulls and brains of her children and maybe getting up to see what she could do.

And what did she receive? A well placed bullet right between her eyes.

He didn't get away with it, ladies and gentlemen. You ladies and gentlemen have sat here and listened to the evidence and given this defendant a fair trial, and his Honor has given him a fair trial. And when they talk about leading questions and when they talk about putting words in his mouth, what kind of trial did the three kids get? What kind of a trial did Mrs. Anna Ciucci get at the hands of this defendant?

887 He set himself up as a tribunal. He heard his own evidence, the evidence he wanted to hear. He made up his mind of the sentence, what the sentence would be in this case for those people. He made up his mind that the sentence was going to be the death penalty, and that's what he did.

He stood over them like a Chinese executioner with that gun in his hand. One bullet for each person, and that's what he did.

And what kind of a penalty should he get in this case? They talked about the men who made out laws, the men who have brought it down through the years. What kind of courage have they had to see it through all these many years and set up the laws that way? And to expect that at some future time, long after they have passed it, there will be a jury who will sit and listen to the evidence and have the same courage they had, to do the thing which was right, after they heard the evidence.

Ladies and gentlemen, this evidence here is a proper case for the death penalty. Even if you sentenced him to 199 years, even if you gave him 199 years, it would still be a victory for him. It would be a victory the same way he disregarded society in the
888 days when he was floundering his money in new cars.

Ladies and gentlemen, I submit to you that we have proved this defendant guilty beyond all reasonable doubt and I submit to you we have proved the fact he killed his son.

We ask you, ladies and gentlemen to have the same courage that our forebearers did, the same courage you have in your every day trials of life, to go out and sign a verdict of guilty, and based upon this evidence, which is proper evidence for the death penalty, don't give him another victory of 199 years, sign a death penalty verdict in this case.

(Whereupon, the Court instructed the jury as follows:)

889 The Court instructs the jury that these instructions are given and should be considered together as one entire series, and each instruction should be considered in connection with all instructions bearing up the same subject.

If, in putting in the evidence, or in argument, counsel for either party has made any statement not based upon the evidence, or if counsel made any statement which he afterwards withdrew, or which the court afterwards struck out, the jury should wholly disregard such statements. Given.

890 In giving these instructions, it is the intention of the court simply to instruct the jury as to the law applicable to the case, but it is not the intention of the court in the least degree to give the jury any opinion as to whether or not the defendant is guilty of the offense charged in the indictment, or to express any opinion as to the weight or sufficiency of the testimony, or as to the credibility of any witness.

If you have heard any evidence in this case which the court afterwards struck out, you are to wholly disregard such evidence in arriving at your verdict.

From anything the court has said or done in this case you are not to understand that he has any opinion as to the facts appearing in evidence. It is the duty and province of the jury to weigh the evidence which has been introduced in the case and to determine what fact, or facts, such evidence establishes, and having done so, to apply to such facts the law as stated in these instructions. Given.

891 The jury are instructed that it is not proper for counsel in a case to state anything in argument bearing upon a question of fact and claimed to be within his personal knowledge or which may have been stated to him by others not witnesses in this case. You are, therefore, instructed to disregard such statements, if any have been made, and to make up your verdict upon the evidence actually given in the case, without placing any reliance upon or giving any consideration to any statements of counsel not supported by the evidence.

In determining any of the questions of fact presented in this case, you should be governed solely by the evidence introduced before you. Given.

892 The Court further instructs you that under your oaths you should not allow sympathy or prejudice to influence you in the least in finding your verdict in this case. In your deliberations you should not be influenced by anything other than the law and the evidence in the case. Given.

893 The jury are the sole judges of the facts in the case, the credibility of the witnesses, and the weight to be given to their testimony. And, in anything that the Court may have said throughout the trial or anything that the Court may say in the instructions, the Court has not intended and does not now intend to express any opinion upon the facts of the case, upon the credibility of the witnesses, or the weight to be given to their testimony. Given.

894 It is the duty of the jury to consider all the evidence which the Court has admitted as competent for their consideration, and they have no right to disregard the evidence of any statement which the Court has permitted them to hear. The jury are the exclusive judges of the credibility of the statement and the weight which should be given it as proof. They shall take into consideration all the circumstances in evidence in regard to the making of the statement in determining its truth of falsity. Whether the statement is true or false, or partly true and partly false, is a question for the jury to determine. It is for the jury to consider and weigh the statement and give it such weight as it may be entitled to in the judgment of the jury. Given.

895 The Court instructs the jury that the jury are the sole judges of the credibility of the witnesses. In judging the credibility of the witnesses in this case, you should carefully scrutinize the testimony given, and in doing so, you may consider all the circumstances under which any witness has testified, his demeanor and manner while on the stand, his interest, if any, in the outcome of the case, the relations which he bears to the State or to the defendant, the manner in which he might be affected by the verdict, and the extent to which he is contradicted or corroborated by any other credible evidence.

Given.

896 The indictment in this case is not to be considered as any evidence or presumption of guilt against the defendant. It is a mere formal charge necessary to place the defendant upon trial. The defendant under the law is presumed to be innocent of the charge in the indictment and this presumption remains throughout the trial with the defendant until you have been satisfied by the evidence in the case beyond all reasonable doubt of the guilt of the defendant. This presumption of innocence is not intended to aid any one who is in fact guilty of crime to escape, but is a humane provision of the law intended, as far as human agencies can, to prevent an innocent person from being convicted. Throughout this case the burden of proving the guilt of the defendant beyond all reasonable doubt is on the State and the law does not require the defendant to prove his innocence.

If you are convinced from all the evidence in the case beyond all reasonable doubt that the defendant is guilty as charged in the indictment, it is your duty

897 to find such defendant guilty. If, you are not convinced from the evidence beyond all reasonable doubt of the guilt of the defendant, it is your duty to find such defendant not guilty. Given.

898 The Court instructs the jury, in the language of the statute, that murder is the unlawful killing of a human being, in the peace of the people with malice aforethought, either expressed or implied. The unlawful killing may be perpetrated by shooting, asphyxiating or by any other of the various forms of means by which human nature may be overcome, and death thereby occasioned.

Expressed malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. Given.

899 The Court instructs the jury, as a matter of law, that malice includes not only anger, hatred and revenge, but every other unlawful and unjustifiable motive. Given.

900 The Court instructs the jury that mere probabilities are not sufficient to warrant a conviction; nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of the indictment; nor is it sufficient that, upon the doctrine of chances, it is more probable that the defendant is guilty than innocent. To warrant a conviction of the defendant he must be proved to be guilty so clearly and conclusively that there is no reasonable

theory upon which he can be innocent when all the evidence in the case is considered together; and if the prosecution has failed to make such proof, the jury should find the defendant not guilty. Given.

901 The Court instructs the jury, as a matter of law, that the words "malice aforethought" do not necessarily imply the lapse of considerable time between the malicious intent to take life and the actual execution of that intent; whether the design to effect death was formed on the instant or had been previously entertained is immaterial, for the malicious killing, if proven by the evidence beyond a reasonable doubt, in either case is murder under the laws of this State. Given.

902 Circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the part charged, and if the facts and circumstances shown by the evidence in this case are sufficient to satisfy the jury of the guilt of the defendant beyond a reasonable doubt, then such evidence is sufficient to authorize the jury in finding the defendant guilty. The law demands a conviction wherever there is sufficient legal evidence to show the defendant's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence. Given.

903 The Court instructs the jury that in order to convict the defendant upon circumstantial evidence, it is necessary not only that all the circumstances concur to show that he committed the crime charged, but that those circumstnces are inconsistent with any

other reasonable conclusion than that of his guilt. It is not sufficient to entitle the prosecution to a conviction that the circumstances coincide with, account for, and render probable, the hypothesis of guilt sought to be established by the prosecution, but those circumstances must exclude, to all moral certainty, every other reasonable hypothesis but the single one of guilt of the defendant, or the jury must find the defendant not guilty. Given.

904 The Court instructs the jury that whoever is guilty of murder shall suffer the punishment or death, or imprisonment in the penitentiary for his natural life, or for a term, not less than fourteen years. Given.

905 The Court instructs the jury that if the evidence in this case can be reconciled upon any other reasonable theory or hypothesis than that of this defendant's guilt, it is your duty to do so and acquit the defendant. Refused.

906 The Court instructs the jury, as a matter of law, that the defendant has put in evidence his general reputation for being a peaceable and law abiding citizen, that such evidence is permissible under the law, and is to be by the jury considered as a circumstance in this case. But the Court further instructs the jury that if, from all the evidence in this case, they are satisfied beyond a reasonable doubt of the guilt of the accused, then it is the duty of the jury to find him guilty, notwithstanding the fact that, if it be a fact, that heretofore the accused has borne a good reputation for being a peaceable and law abiding citizen. Refused.

The Court: Now, when you retire to the jury-room, to consider your verdict, these instructions will go with you so that if you have not understood or heard the Court at any time, you may read the instructions because they will be with you.

In addition to the instructions, the Court will send with you four types of verdict.

The Court instructs the jury that if, from the evidence, they find the defendant guilty of murder, in their verdict they will say:

> "We, the jury, find the defendant, Vincent Ciucci, Senior, guilty of murder in manner and form as charged in the indictment and we fix his punishment at death."

Or another type of verdict:

> "We, the jury, find the defendant, Vincent Ciucci, Senior, guilty of murder in manner and form as charged in the indictment and we fix his punishment at imprisonment in the penitentiary for the term of his natural life. And we further find from the evidence that the said defendant, Vincent
907 Ciucci, Senior, is now about the age of 28 years."

Or another type of verdict:

> "We, the jury, find the defendant, Vincent Ciucci, Senior, guilty of murder in manner and form as charged in the indictment, and we fix his punishment at imprisonment in the penitentiary for the term of blank years"—and in the blank space, any exact number of years, not less than 14—"And we further find from the evidence that the said defendant is now about the age of 28 years."

908 Or if the jury find the defendant not guilty in their verdict, you will say:

> "We, the jury, find the defendant, Vincent Ciucci, Senior, not guilty."

Now, these four types of verdicts will be sent with you to the juryroom. When you retire to consider your verdict, you will select one of your number to act as foreman, and when you have arrived at a verdict, you will all sign that verdict, the foreman will sign first. When you sign, use your entire name. Please do not use initials.

909 When a verdict is reached, use the buzzer to notify the sheriff. You will find the buzzer in the jury room.

(Bailiffs are sworn)

(Thereupon the jury retired, in the custody of the Bailiffs, with the Court's charge in writing, to consider their verdict.)

(Whereupon the following proceedings were had outside the presence and hearing of the jury, to wit:)

The Court rules that the exhibits, the pictures, that have been heretofore identified, may go back to the jury room with the jury as well as the cartridge cases and pellets, over the objection of the defendant. Mr.
910 Papanek states that these exhibits are numbers 11, 12, 13, 15, 16, 17, 18, and the pictures from 19 through 25 inclusive. The Court states that there were 17 instructions offered. The instructions offered on behalf of the State were numbers 1 to 14 inclusive, and the instructions offered on behalf of the Defense were numbers 15 through 17 inclusive. Of those given, the State's instructions numbers 1 through 14, inclusive, were given, and for the Defense instructions numbers 15 and 16 were given. There were two instructions
911 refused, being State's instruction number 14 and Defense instruction number 17. The Court states for the record that the defendant has objected to the giving of all of the instructions on behalf of the State.

(Thereupon, the jury returned, after deliberation, to the bar of the Court and the following proceedings were had within the presence and hearing of the jury, to wit:)

The Court: Will the foreman please rise. Has the jury arrived at a verdict?

The Foreman: We have.

The Court: Will you please hand the verdict to the sheriff.

(Whereupon the verdict was read by the clerk as follows:)

912 "We, the jury, find the defendant, Vincent Ciucci, Sr., guilty of murder, in manner and form as charged in the indictment, and we fix his punishment at death." Signed by the Foreman and eleven jurors.

The Court: Now, ladies and gentlemen, you have been an attentive jury and the Court believes you have arrived at your verdict conscientiously. You have had an opportunity to see and participate in the operation of the criminal court, and we believe you are better informed citizens as a result of your experience here. You are now discharged from further consideration of this case. You may retire to the jury room.

Mr. Doherty: May it please the Court, we would like the jury polled.

The Court: Pardon me.

The Clerk: As your name is called you will please stand and answer both questions asked of you.

913 (Whereupon each juror was asked by the clerk whether or not this was his verdict and whether or not this is now his verdict, and each juror answered in the affirmative. The Court discharges the jury from further consideration of this case.

915 (Whereupon the following proceedings were had outside the presence and hearing of the jury, to wit:)

Mr. Doherty states that he would like to make a motion in arrest of judgment and motion for a new trial. The Court orders the motion to be filed on or before January 25th, and set for a hearing on January 28th.

916 (Whereupon said cause was continued to January 28, 1955.)

917 Tuesday, January 18, 1955

Morning Session, 10:00 o'clock a.m.

Parties present: Mr. Papanek, Mr. Doherty, Mr. O'Donnell.

918- Discussion between Court and counsel.

919

920 Mr. Doherty presents a motion and a petition asking that the Court order the complete transcript written up in accordance with section 769.A of the criminal code, which petition is in words and figures as follows, to wit:

Mr. Doherty: "Now comes your petitioner, James J. Doherty, one of the attorneys of record in the above entitled cause, and says:

"1. That he is one of the attorneys of record in the above entitled cause by virtue of an order heretofore entered by His Honor, Judge Arthur J. Murphy, appointing him to represent the defendant, Vincent Ciucci, Sr., an indigent person.

"2. That the said cause came on for trial before his Honor, Judge Arthur J. Murphy, and a jury on January 3, 1955, and was concluded on the evening of January 11, 1955, at which time the jury returned a verdict finding the defendant, Vincent Ciucci, Sr.,

guilty of the crime of murder and fixing his punishment at death;

"3. That the defendant, Vincent Ciucci, Sr., is a poor person, totally without means, and unable to prosecute his Writ of Error and pay the costs and
921 expenses thereof, including the costs of transcribing the proceedings upon trial of said cause;

"4. That the testimony and proceeding in the trial of the above entitled cause is so voluminous that it is impossible for your petitioner, James J. Doherty, to adequately and properly prepare a Motion for a New Trial in this case without a transcript of the proceedings;

"5. That the defendant is entitled to a transcript of the proceedings under the provisions of Chapter 38, Section 769.A, Smith-Hurd Illinois Annotated Statutes.

"Wherefore, Your Petitioner Prays, that this Honorable Court enter an order herein forthwith directing the Official Court Reporter of the Criminal Court of Cook County, Illinois, to prepare the original transcript of the proceedings in the trial of the above entitled cause for the use and benefit of the defendant, Vincent Ciucci, Sr., and to tender the same, together with a carbon copy thereof, to the defendant's attorneys within a reasonable time, without cost to the defendant;

921 "And Your Petitioner Further Prays, that this Honorable Court grant a continuance for the filing of a Motion for a New Trial until counsel has had an opportunity to study such transcript and adequately and properly prepare a Motion for a New Trial."

923 In support of the immediately foregoing petition, Mr. Doherty states that it is absolutely incumbent upon the Defense to sit down and study the transcript of this proceeding, for the reason that this Writ of Error is the thing which, when it goes to the Supreme Court, hinges directly upon the motion for a new trial. Those points not raised in the motion for a new trial are expressly waived. He further states that you cannot separate the Writ of Error from the motion for a new trial because of the fact that the Supreme Court has held in numerous cases that what you don't raise in your motion for a new trial, you cannot raise for the first time in the Supreme Court.

The Court states that it will announce its decision when the defendant is in court.

926 (Defendant enters the courtroom)

927 The motion is again stated in the presence of the defendant.

The Court: Let the record show that leave is given to the defendant to file the motion as stated by his counsel. The Court denies the motion at this time.

Mr. Doherty: May we respectfully preserve an exception.

928 Friday, January 28, 1955

Morning Session, 10:00 o'clock a.m.

Parties present: Mr. Papanek, Mr. Doherty, Mr. O'Donnell.

Discussion between Court and counsel.

929 Motion for a new trial is filed in words and figures as follows:

"Now, after verdict and before sentence in the above entitled cause, comes the Defendant, Vincent Ciucci,

Sr., by his attorneys, Arthur J. O'Donnell and James J. Doherty, and moves this Honorable Court to set aside the verdict of the jury and to grant unto the
929 Defendant a new trial in this cause upon the following grounds and reasons, to wit:

"1. The Court erred in not dismissing the cause on the ground of former jeopardy.

"2. The Court erred in not sustaining the Defendant's Motion to Dismiss on the ground of former jeopardy.

"3. The Court erred in not sustaining the Defendant's Motion to exclude all reference to deaths other than the death forming the basis of the instant indictment.

"4. The Court erred in admitting improper and incompetent evidence offered by the People.

"5. The Court erred in permitting the introduction of incompetent, irrelevant and immaterial evidence by counsel for People, which was prejudicial to the Defendant.

"6. The Court erred in permitting the introduction of highly inflammatory evidence which was of no probative force by the People, all of which was prejudicial to the Defendant.

930 "7. The counsel for the People failed to prove every material allegation in the indictment beyond a reasonable doubt.

"8. The verdict of the jury is against the manifest weight of the evidence.

"9. The evidence did not exclude, to a moral certainty, every other reasonable hypothesis but the single one of guilt of the Defendant.

"10. The Court erred in admitting into evidence testimony of Eugene Murphy, a lay witness, which testimony was without foundation and in the nature of expert opinion evidence, and which was inflammatory, immaterial and incompetent.

"11. The Court erred in permitting the introduction of the State's exhibits and each of them.

"12. The Court erred in permitting the jury to examine the State's exhibits and each of them.

"13. The Court erred in permitting the jury to take the State's exhibits and each of them into the jury room during the jury's deliberation of the verdict.

931 "14. The Court erred in unduly and arbitrarily restricting and limiting the cross examination of the witnesses of the People

"15. The Court erred in not directing a verdict for the Defendant at the close of the State's evidence.

"16. The Court erred in giving to the jury People's instruction and each of them.

"17. The Court erred in refusing to give the instructions and each of them tendered by the Defendant.

"18. The conduct and remarks of the State's Attorney deprived the Defendant of his constitutional rights to a fair and impartial trial.

"19. The conduct and remarks of the Court deprived the Defendant of his constitutional right to a fair and impartial trial.

"20. The Court erred in overruling each of the several motions made by Defendant's counsel to withdraw a juror and declare a mistrial.

932 "21. The argument of the State's Attorney was prejudicial and improper.

"22. That the Court erred in congratulating and in effect thanking the jury for a job well done, and then dismissing them before counsel for the Defendant could make a request to have the jury polled.

"23. The Court erred in making objections and sustaining its own objections to evidence offered by Defendant when no objection to such evidence was made by counsel for the State. Such objections were made and sustained by the Court in a manner prejudicial to the Defendant.

"24. The Court erred in permitting statements of counsel for the State, which were objected to, to be re-read, at the Court's request, to the jury after said objections had been sustained. That the ruling of the Court that the jury should disregard such remarks of the State's Attorney was insufficient to erase from the minds of the jury the impression made by such remarks, and thus Defendant was denied a fair and impartial trial.

933 "25. The Court erred in admonishing Defendant's counsel in the presence of the jury.

"26. The Court erred in allowing proof of evidence of the commission of other offenses by the Defendant.

"27. The Court erred in permitting counsel for the State to cross examine witnesses for the defense upon irrelevant and immaterial matter over objection.

"28. The Court erred in permitting the State's Attorney to cross examine witnesses on matters not germaine to the issue herein and beyond the scope of the direct examination over objection.

"29. The verdict is contrary to law, in that the Court admitted improper evidence and excluded proper evidence over objection.

"30. The Court erred in permitting prejudicial and inflammatory argument by counsel for the prosecution over objection.

"31. The Court erred in that it unduly accentuated highly inflammatory evidence sought to be introduced by the State by ruling upon objections thereto in chambers.

934 "32. The Court erred in that it unduly accentuated highly inflammatory and prejudicial argument of counsel for the State by ruling upon objections thereto in chambers.

"33. That the State failed to prove the corpus deliciti as required by law.

"34. The verdict of the jury is the result of passion and prejudice and is contrary to the evidence and the law.

"35. The misconduct of juror, George V. Malmgren, deprived the defendant of his constitutional rights to a fair and impartial trial, in that on January 10, 1955, at 2:45 p.m., the Court admonished said juror not to take notes during the taking of testimony; that the said admonition was during the testimony of Officer Roy Triner at a time when the State's case was almost completed; that the notes were taken in the front row of the jury box, out of sight of defense counsel; that said George V. Malmgren subsequently became foreman of the jury.

"36. That the Court erred in denying to the Defendant a fair and impartial trial as guaranteed him under Article II, Sections 2 and 10 of the Constitution of the State of Illinois, and under the Fifth and Fourteenth Amendments of the Constitution of the United States.

"Wherefore, this Defendant prays that this Honorable Court, by its order, grant this Defendant a new trial." Signed, Arthur J. O'Donnell and James J. Doherty, Attorneys for the defendant.

936-970 Argument by Mr. Doherty on defendant's motion for new trial.

970-977 Argument by Mr. Papanek in opposition to defendant's motion for a new trial.

978-979 Argument by Mr. Doherty in reply on motion for new trial.

979-980 Argument by Mr. O'Donnell in support of defendant's motion for a new trial.

981 Remarks by Court to counsel.

982 Motion for new trial is denied by the Court.

Mr. Doherty asks that the exception be preserved to his Honor's ruling and for five days in which to file a written motion in arrest of judgment.

983 Discussion between Court and counsel. Motion granted and leave is given to defense counsel to file a motion in arrest of judgment within five days and said motion was set for a hearing on Friday, February 4th.

(Whereupon said cause was continued to Friday, February 4, 1955.)

February 4, 1955.

10:00 o'clock a.m.

Parties present: The same.

Discussion between Court and counsel.

Argument by Mr. Doherty in support of defendant's motion in arrest of judgment.

Argument by Mr. Papanek in opposition to defendant's motion in arrest of judgment.

The Court denies the motion in arrest of judgment. Mr. Doherty asks that an exception to the ruling be preserved. Mr. Papanek asks that the Court enter judgment on the verdict.

Judgment is entered on the verdict by the Court.

Mr. Papanek presents an order to the Court with reference to setting of the execution date.

The Court enters the order ordering execution on the first day of April, 1955.

(Whereupon Mr. Papanek handed Mr. Doherty a copy of the order of execution.)

(Whereupon the Court called the defendant before the bar and his Honor read the order setting the execution.

Mr. Doherty enters a motion in writing asking the Court to enter an order granting the defendant a copy of the record in this case and a carbon copy of the record.

The Court enters an order granting the defendant a copy of the record herein and a carbon copy.

(Whereupon a discussion was had between Court and counsel not within the presence or hearing of the court reporter.)

(Which were all of the proceedings had at the hearing of the above entitled cause.)

994 Affidavit of court reporters, Harold A. Erickson and Bernard Hartnett.

995 Certificate of trial court Judge.

GEORGE N. LEIGHTON,
Attorney for Plaintiff
in Error.

65 In the Supreme Court of Illinois

No. 33797

PEOPLE STATE OF ILLINOIS, DEFENDANT IN ERROR

v.

VINCENT CIUCCI, SR., PLAINTIFF IN ERROR

ERROR TO CRIMINAL COURT, COOK COUNTY

Argument and submission

March 14, 1956

Now on this day come the parties hereto and this being one f the days set apart for the call of the docket under the rules f this Court, and it appearing to the Court that plaintiff in rror hath filed herein a duly certified transcript of the record nd proceedings of the Court below, together with printed ab-tracts thereof, and briefs and arguments of counsel in support f the errors assigned herein, and entered motion to reverse he judgment and remand said cause and for costs, and the aid defendant in error having entered motion to affirm the udgment and for costs and procedendo, and said motions be-ng taken under advisement for final hearing, and the Clerk f this Court reporting that said cause is now ready to be aken, and said cause having been argued orally by George N. eighton for plaintiff in error and by Samuel Papanek and udolph L. Janega for defendant in error is here submitted or the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and he same is hereby taken under advisement.

66 In the Supreme Court of Illinois

Present: HARRY B. HERSHEY, Chief Justice, Justice Joseph . Daily, Justice George W. Bristow, Justice Ray I. Klingbiel, ustice Walter V. Schaefer, Justice Ralph L. Maxwell, Justice

Charles H. Davis, Latham Castle, Attorney General, Robert G Miley, Marshal.

Attest: Fae I. Searcy, clerk pro tempore.

[File endorsement omitted.]

Docket No. 33797

Agenda 2—March, 1956

THE PEOPLE OF THE STATE OF ILLINOIS, DEFENDANT IN ERROR

v.

VINCENT CIUCCI, SR., PLAINTIFF IN ERROR

Opinion

May 23, 1956

PER CURIAM: After trial by jury in the criminal court of Cook County, Vincent Ciucci was convicted of murder and sentenced to death. He has sued out a writ of error to review the judgment.

The indictment charged defendant with murdering his nine-year-old son, Vincent, Jr., by shooting and asphyxiation. The record shows that defendant, with his wife and their three children, lived in the rear portion of a brick building. They operated a small grocery store in the front portion. At two o'clock in the morning of December 5, 1953, the building was discovered in flames. Defendant was observed in a crouched position inside the front door of the store portion, which had a glass panel, and two persons in the neighborhood broke the door and pulled him out of the burning building. Firemen later arrived and removed the bodies of his wife and three children, which were still lying in their respective beds. The bodies were taken to the county hospital, where they were pronounced dead. Upon removal to the morgue it was discovered that each had a hole penetrating the head.

The day before the fire defendant had borrowed a .22-caliber rifle from a friend, stating that he wanted to go hunting for rabbits. After the fire subsided the rifle was found separated into its two parts in a kitchen wardrobe cabinet. Two days later police officers found several empty .22-caliber cartridge cases on the premises. Ballistic tests proved these to have been fired from the rifle borrowed by defendant. They also found

portions of a sheet, a pillow slip and a pillow, all of which bore human blood stains, the latter also containing a bullet. Bullets were found in the brains of the wife and daughter, and the son's head contained a wound which an expert testified was caused by a bullet passing through the head from the right side and leaving the left side.

For two or three years prior to the fire defendant had been acquainted with a 21-year-old girl named Carol Amora. In May, 1952, her father died leaving her an inheritance of $2,300. From time to time she loaned defendant a total of $1,300 of this to enable him to buy a car and pay debts. They began having sexual relations, and lived together for a time in a hotel. Defendant stated his wife would not give him a
368 divorce but only separate maintenance. After Carol became pregnant by him, he stated he owed back "alimony" to his wife, and could not afford to keep Carol with the baby coming in addition to his wife and three children. After the baby was born they resumed sexual relations, defendant expressing intentions of getting a divorce.

On the day of the fire the defendant, while in the hospital, gave a lengthy statement to the authorities in which he related that on the preceding night his children went to bed about 10:30 o'clock, his wife retired at 11:30, and he went to bed a short time after midnight; that the next thing he remembered was a feeling of heat and shortness of breath; that the building was filled with smoke, causing him to gag for breath; that he called to his wife, leaped out of bed and tried to reach the telephone; and that he then ran through the store, banged on the front door and broke the glass.

Defendant did not testify at the trial. Three witnesses were called on his behalf. Two of them testified defendant loved his son; and the third, a neighbor, testified that about two o'clock in the morning of December 5, 1953, he heard a loud booming noise and the shouting of people, that he looked toward the building in question and saw smoke and flames coming from it, and that he ran to the front of the building and helped pick up the defendant, who was lying on the ground half in the vestibule and half outside. No evidence was offered to dispute or explain the principal facts brought out by the evidence for the prosecution.

Defendant's thirteen assignments of error may be grouped into seven general categories. He urges first that inflamma-

tory and irrelevant evidence was admitted. The evidence complained of is the testimony of Carol Amora concerning their illicit relationship and the money borrowed by defendant; testimony concerning the deaths of defendant's wife and two daughters and descriptions of their bodies; and the rifle, empty cartridge shells, bullets, and blood-stained pillow slip and bed sheet, which were admitted as exhibits and taken by the jury into the jury room. The evidence of illicit sexual relationship and the deaths of defendant's wife and other children, it is argued, is incompetent because it relates to other offenses and because it is highly inflammatory in nature. The general rule, of course, is that evidence of a distinct substantive offense, or evidence which tends to mislead or prejudice the jury, cannot be admitted in a prosecution for another offense.
369 . This rule, however, is simply one aspect of the still more general rule that evidence must be confined to the subject of the indictment, which is the only matter an accused can be expected to come prepared to answer (Farris v. People, 129 Ill. 521.) The rule does not render incompetent such evidence where it is pertinent to the issue and tends to prove the crime charged. (People v. Fricker, 320 Ill. 495.) In this case there is a logical connection between the sexual relationship with Carol Amora and the crime with which defendant was charged.

Evidence of the death of defendant's wife and two daughters in the same catastrophe was clearly admissible as a part of the res gestae. (People v. Murphy, 276 Ill. 304; Hickam v. People, 137 Ill. 75.) While the prosecution indulged in some unnecessary detail of evidence descriptive of the condition of the bodies, it was not an abuse of discretion for the court to admit it, or to admit as exhibits the rifle, cartridge cases, bullets, and blood-stained bed clothing. (People v. Fisher, 340 Ill. 216.) The general rule is that whatever tends to prove any material fact is relevant and competent. Much of defendant's argument as to evidence goes merely to its weight and not to its admissibility. There was no error in admitting the evidence in question, nor did the court err in permitting the jury to take the exhibits to the jury room. Whether particular exhibits bear directly on the charge, and hence may be taken to the jury room, is a matter resting largely in the sound discretion of the trial judge. People v. Love, 310 Ill. 558, 567.

It is further contended the trial court in two instances improperly allowed witnesses for the State to usurp the province of the jury by giving opinions of fact upon which the decision of the case depended. An expert in the city fire department testified that on the basis of his examination of charred sections of the premises on the day of the fire he had an opinion there had been five separate and distinct fires. The coroner's physician, a specialist in the field of pathology, described the wound in the head of the deceased son and testified that in his opinion it was caused by a .22-caliber bullet. Defendant insists the matters testified to were ultimate facts for the jury and incompetent as a subject for expert testimony. We
370 can see no error in allowing the testimony. As to the latter, the fact for the jury to determine was whether the wound was inflicted by defendant with the particular gun in question. (See Cannon v. People, 141 Ill. 270, 277.) As to the fireman's testimony, the question whether there were several distinct fires is obviously not an ultimate one to be determined by the jury. It has long been the rule in this State that expert testimony is acceptable wherever peculiar skill and judgment applied to a particular subject are required to explain results or to trace them to their causes. (People v. Jennings, 252 Ill. 534, 550.) In 20 Am. Jur. 654–655, it is stated that "The modern tendency is to make no distinction between evidential and ultimate facts subject to expert opinion. The courts consider that it is more important to get to the truth of the matter than to quibble over distinctions in this regard which are in many cases impracticable. Accordingly, in many cases expert witnesses have been permitted to state facts known to them because of their expert knowledge, even though their statements may involve the ultimate fact to be determined by the jury." And at page 734 of the same volume it is observed that "A competent expert may testify from the nature of a wound as to the character of the weapon which caused it, and even nonexpert testimony is sometimes accepted in this connection." There is no merit in defendant's contentions.

Complaint is made that the court erred in limiting the cross-examination of various witnesses for the State. While the defendant's brief contains portions of the testimony, objections and rulings, the nature of the error, if any, is left to inference. Defendant fails to point out wherein the court erred

in its rulings, except that as to one witness defendant complains he was not allowed to attack credibility by showing unlawful occupation; and that as to the cross-examination of an assistant State's Attorney who had testified, defendant contends he should have been permitted to ask whether the present case was the first one handled by the witness in his official capacity. We have examined the rulings questioned and find them to be proper.

The next contention also merits little discussion. It is argued that the court displayed prejudicial conduct toward defendant and his counsel. To support the assertion de-
fendant complains that the judge, in overruling objec-
371 tions to testimony of Carol Amora, used the words "she
may answer." Defendant says that by such remarks the judge conveyed a suggestion of partiality toward State witnesses. Another matter relied upon to support the position is that in sustaining objections the court said "Jury to disregard," which comment defendant considers an inadequate correction of impropriety. The last matter criticized by defendant is the practice of the judge in retiring to his chambers to pass upon objections raised at the trial. The contention, apparently, is that this practice, in a manner which defendant does not point out or explain, accentuated "inflammatory and prejudicial argument" by the prosecutor. We see no impropriety in any of these remarks and actions of the court.

It is urged that the prosecutor persisted in asking questions to which objections had been sustained, and that in his closing argument to the jury, he made improper and prejudicial appeals to emotion and passion. The argument to the jury emphasized that the wife and children received no trial at the hands of the defendant, that he imposed on them the death sentence and shot them "like a Chinese executioner," and that defendant should get the same kind of penalty. We have carefully considered the conduct complained of, and conclude it does not require or justify a reversal of the judgment. As to the closing argument, the jury had a duty to fix the penalty from a consideration of all the circumstances, including the atrocity of the crime. The prosecutor was within the limits of propriety in arguing that the death penalty should be imposed. People v. Sullivan, 345 Ill. 87.

Defendant objects to the refusal of a tendered instruction to acquit him if the evidence could be reconciled on any hypothe-

sis other than his guilt. While the instruction might properly have been given, it was not error to refuse it since another instruction tendered by defendant was given which embodied the same proposition. (Parsons v. People, 218 Ill. 386.) Complaint is made of an instruction given at request of the State which defined murder as unlawful killing with malice aforethought, and which stated that "the unlawful killing may be perpetrated by shooting, asphyxiating or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned." The instruction was sufficiently based on the evidence, and is not subject to the criticisms made by defendant. The fact that the evi-
372 dence was circumstantial in nature does not render the instruction inapplicable. Another given instruction objected to by defendant declared, inter alia, that the law demands a conviction wherever there is sufficient evidence to show the defendant's guilt beyond a reasonable doubt, and that circumstantial evidence is legal evidence. This instruction was given and approved in People v. Guido, 321 Ill. 397, at page 415, and has received further approval in other decisions of this court. While we feel that an instruction using the words "authorizes" or "warrants" would be more appropriate than the word "demands," and the definition of circumstantial evidence should have been qualified to the extent that such evidence must be strong and convincing in character, nevertheless we do not believe the result of the trial would have been different had the instruction been given in the form above suggested and that any irregularity in this respect does not constitute prejudicial error. Objection to a further given instruction defining malice aforethought is too trivial and lacking in merit to warrant discussion.

It is assigned as error that the court denied a "motion to dismiss" on the ground of former jeopardy. Defendant had been tried and convicted in two previous trials for the murders of his wife and daughter respectively. He now argues that the two former prosecutions were for the same offense as the present one, and hence operate as a constitutional bar to his prosecution. The long-established test of former jeopardy, however, is whether the facts charged in the latter indictment would, if found to be true, have justified a conviction under the earlier indictment. (People v. Allen, 368 Ill. 368.) When this test is applied here it is obvious that under the indictment

for murder of his wife a verdict could not be sustained finding him guilty of murdering his son. It is the identity of the offense, and not of the act, which is referred to in the constitutional guaranty against double jeopardy; and where two or more persons are unlawfully killed, even though by a single act, there is a corresponding number of distinct offenses. (People v. Allen, 368 Ill. 368.) In the case at bar not only were these separate offenses, but the acts themselves, i. e., the shootings, were separate and distinct. There is no merit to the present contention.

Counsel urges, finally, that the evidence is insufficient to sustain the verdict. He argues that the proof does not show whether the cause of death was shooting or whether it was inhalation of smoke or carbon monoxide from the
373 fire; that there is nothing to prove the origin of the fire; and that there is nothing but suspicious circumstances to connect defendant with the crime. We think the evidence is ample to show his guilt beyond all reasonable doubt. It is not disputed that he was present with his wife and children shortly before their deaths, and was the only person present with their dead bodies. It is likewise beyond reasonable dispute that he had motive for ridding himself of his family; that on the preceding day he had borrowed a .22-caliber gun; that empty cartridge cases fired from that gun were found on the premises; and that the decedent was shot in the head with a .22-caliber bullet. There is absolutely nothing in the record tending to show that the crime was committed by someone else.

On this record we are convinced not only that defendant was proved guilty beyond a reasonable doubt, but that he also has been accorded a fair trial under the law. This murder was a revolting, brutal one, with no extenuating circumstances whatever. Where the law is shown to have been fully met it is the duty of this court to affirm the judgment.

The judgment of the criminal court of Cook County is affirmed, and the clerk of this court is directed to enter an order fixing October 5, 1956, as the date on which the original sentence entered in the criminal court of Cook County shall be executed. A certified copy of the order shall be furnished by the clerk of this court to the sheriff of Cook County.

Judgment affirmed.

374 In the Supreme Court of Illinois

No. 33797

PEOPLE STATE OF ILLINOIS, DEFENDANT IN ERROR

v.

VINCENT CIUCCI, SR., PLAINTIFF IN ERROR

ERROR TO CRIMINAL COURT, COOK COUNTY, 54—839

Judgment

May 23, 1956

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Criminal Court of Cook County aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error.

And it is further ordered by the Court that the sentence of the Criminal Court of Cook County shall be executed on the fifth day of October, 1956. The Clerk of this Court is directed to enter an order to that effect and furnish a certified copy of such order to the Sheriff of Cook County.

375 I, Fae I. Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files, and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said court this .... day of ....., 19.....,

_____,

Clerk pro tempore,
Supreme Court of the State of Illinois.

377 In the Supreme Court of Illinois

[Title omitted.]
[File endorsement omitted.]

Petition for rehearing

Filed June 7, 1956

To the Honorable Chief Justice of the Supreme Court of Illinois and to the Justices thereof:

Plaintiff in Error respectfully petitions the Court to rehear this cause because it appears that the Court in rendering its opinion in this case inadvertently overlooked an important point asserted by the Petitioner in his Brief. It further appears that the Court in its opinion misapprehended an important point made by petitioner in his Brief.

The point overlooked was included in Point V (Brief and Argument for Plaintiff in Error, page 99). This concerns the instruction given by the trial court to the jury at the request of the State. We respectfully call the Court's attention to pages 99 and 100 of the Brief and Argument for Plaintiff in Error where it is argued that the instruction on circumstantial evidence misled and confused the jury because the instruction defined circumstantial evidence without the qualifications expressed by this Court in People v. Finch, 394 Ill. 183 and in People v. Wilson, 400 Ill. 461 at page 474. It is clear
378 from the opinion filed in this cause that this Honorable Court did not consider this important point made by defendant in his Brief. We submit that the propriety of this instruction is a vital question. This being a case resting solely on circumstantial evidence, it is imperative that the correct instruction on circumstantial evidence was given by the trial court to the jury. Involved in this point is the fairness of the trial had by the defendant in the court below.

It is also clear that the Court inadvertently misapprehended Point X of defendant's Brief (Brief and Argument for Plaintiff in Error, pages 132 to 138). The Court in its opinion dealt with Point X as if it were an argument involving the doctrine of double jeopardy. However, it was concisely stated that "* * * We do not consider it determinative of the constitutional questions asserted that defendant's case does not fall into the established rules of double jeopardy * * *" (Brief,

page 133). Then, the Point was developed to invoke the doctrines of due process of law and of the equal protection of the laws of the State of Illinois (Brief, pages 133–138). The gravamen of the wrong concerning which the defendant complained was the multiple form of the prosecutions against him elected by the State. The series of prosecutions arose out of the singular event; the deaths of his wife and his three children. It was not the claim of double jeopardy which the defendant asserted in Point X. It was the denial of due process of law and equal protection of the laws resulting from the method of prosecution adopted by the State which deprived the defendant of the benefits of well established rules of Illinois criminal law. These rules were set forth in the Brief (Brief, pages 133–138).

CONCLUSION

Wherefore, Plaintiff in Error respectfully prays that
379 this Honorable Court reconsider the record and proceedings herein and grant a rehearing of the cause under the rules of the Court.

Respectfully submitted.

GEORGE N. LEIGHTON,
123 West Madison Street, Chicago 2, Illinois,
Franklin 2–1106, Attorney for Plaintiff in Error.

380 In the Supreme Court of Illinois

Present: Ray I. Klingbiel, Chief Justice, Justice Joseph E. Daily, Justice George W. Bristow, Justice Charles H. Davis, Justice Walter V. Schaefer, Justice Harry B. Hershey, Latham Castle, Attorney General, Robert G. Miley, Marshal.

Attest: Fae I. Searcy, Clerk pro tempore.

[Title omitted.]

Order denying petition for rehearing

September 12, 1956

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

381 In the Supreme Court of Illinois

[Title omitted.]

Order staying execution pending disposition in Supreme Court

September 26, 1956

And now, on this day, the Court having duly considered the motion by plaintiff in error for stay of execution pending disposition of writ of certiorari in the Supreme Court of the United States, and being now fully advised of and concerning the premises;

It is hereby ordered that the motion by plaintiff in error for stay of execution pending disposition of writ of certiorari in the Supreme Court of the United States be, and the same is, allowed.

383 Supreme Court of the United States

No. 464, Misc. —, October Term, 1956

VINCENT CIUCCI, SR., PETITIONER

v.

PEOPLE OF THE STATE OF ILLINOIS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

Order granting motion for leave to proceed in forma pauperis and petition for writ of certiorari

June 3, 1957

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1050 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1957

Office - Supreme Court, U.S.
FILED
NOV 23 1957
FEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 157

VINCENT CIUCCI, SR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR PETITIONER

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Counsel for Petitioner.

MOORE, MING & LEIGHTON
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Of Counsel

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 157

VINCENT CIUCCI, SR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR PETITIONER

Petitioner, Vincent Ciucci, Sr., is under a sentence of death imposed by an Illinois Court. The Supreme Court of Illinois affirmed, and he brought his petition for certiorari to this Court claiming that in violation of his rights under the 14th Amendment, the State of Illinois subjected him to four trials under charges of murder, using the same evidence, for the same alleged act which according to the State's theory resulted in the death of four persons: Petitioner's wife and his three children. This Court granted

certiorari. The Petitioner respectfully prays that the judgment of the Supreme Court of Illinois be reversed.

Opinion Below

The opinion of the Supreme Court of Illinois is reported in 8 Ill. 2d 619, 137 N.E. 2d 40 (1956), and is reprinted at R. 366-372.

Jurisdiction

The final judgment of the Supreme Court of Illinois was entered on September 21, 1956 on denial of rehearing (R. 375). On September 26, 1956 the Supreme Court of Illinois granted a stay of execution of the death sentence pending disposition of the petition for writ of certiorari in this Court (R. 376). Petition for certiorari was filed on December 11, 1956 and was granted on June 3, 1957 (R. 376).

The jurisdiction of this Court rests upon 28 U.S.C. Sec. 1257 (3).

Questions Presented

1. Whether under the 14th Amendment to the Constitution of the United States the plea of double jeopardy applies to Petitioner's case in which he complains that he was indicted in the State of Illinois under four separate indictments charging the crimes of murder, and he was brought before a jury on one indictment charging that he murdered a named individual member of his family; but without notice by any pleading, he was confronted at his trial with evidence that he had murdered his wife and three children, none of these facts having been alleged in the indictment under which he was tried, found guilty and sentenced to death.

2. Whether under the 14th Amendment to the Constitution of the United States Petitioner was denied due process of law, and denied a fair and impartial trial in the Illinois state court where he was brought to trial under one of four indictments charging the crimes of murder, and he was brought before a jury to face the charge that he had murdered a named individual member of his family; but without notice by any pleading, he was confronted at his trial with evidence that he had murdered his wife and three children, none of these facts having been alleged in the indictment under which he was tried, found guilty and sentenced to death.

3. Whether under the 14th Amendment to the Constitution of the United States the Petitioner was denied due process of law in the Illinois state court where he was tried for the crime of murder of his son, and the state had elected to prosecute Petitioner separately for the alleged murder of Petitioner's wife and their three children, but

the court allowed the state to introduce in evidence proof that at the same time and place Petitioner's wife and three children were killed.

4. Whether under the 14th Amendment to the Constitution of the United States Petitioner was denied due process of law and denied a fair and impartial trial when the Supreme Court of Illinois affirmed the conviction and death sentence of Petitioner after rulings in the trial court which clearly showed that the trial court in Petitioner's case did not adhere to the adopted and recognized rules of evidence in criminal trials in the courts of the State of Illinois.

Statutes Involved

Chap. 38, Sec. 358, Ill. Rev. Stat. (1953).

HOMICIDE

Act of March 27, 1874, resumed.

(Murder) 140. Murder is the unlawful killing of a human being, in the peace of the people, with malice aforethought, either expressed or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned had malignant heart.

Chap. 38, Sec. 360, Ill. Rev. Stat. (1953).

(Murder—Punishment) 142. Whoever is guilty of murder, shall suffer the punishment of death, or imprisonment in the penitentiary for his natural life, or for a term not less than fourteen years. If the accused is found guilty by jury, they shall fix the punishment by their verdict; upon a plea of guilty, the punishment shall be fixed by the court.

Statement

(a) *The facts.*

On December 5, 1953, at about 2:00 A.M. a fire of unknown origin was discovered in the home of Petitioner (R. 366, 367).[1] Petitioner's wife and his three children

[1] The Record consists of two parts: Part I contains the Clerk's Mandatory Record, or the "Common Law Record" as it is called

were found dead. Autopsies later performed showed that the primary cause of death was inhalation of carbon monoxide (R. 285, 296, 366). Further examinations also revealed that each had a hole penetrating the head (R. 282-290). There were no eye witnesses to the origin of the fire or to incidents in or about Petitioner's home the evening of December 4, 1953. The evidence against Petitioner was circumstantial (R. 371).

In December of 1953, the Petitioner was first indicted in four separate indictments. No. 53-2415 charged the murder of Anna, wife of Petitioner. The other three, Nos. 53-2416, 53-2417 and 53-2418, charged the murder of Virginia, Angeline and Vincent, Jr. Petitioner was first brought to trial for the alleged murder of his wife (R. 2). He was found guilty and sentenced to serve a term of twenty years in the Illinois State Penitentiary.

Upon return to the jury's verdict the prosecuting attorney announced that Petitioner would be tried again "... and again and again, if needed, ..." "... if the death penalty is spurned a second time, Ciucci will be tried for the third murder and, if necessary, for the fourth" (Appendix A).

The first trial revealed defects in the indictments returned in 1953. As a consequence, the State's Attorney, in March of 1954, obtained other indictments against Petitioner (R. 6). Nos. 54-839, 54-840 and 54-841 charged Petitioner with the murder of his children, Vincent, Jr., Virginia and Angeline (R. 6). Then on April 2, 1954, the State's Attorney moved for a *nolle prosequi* of the remaining three of the four indictments that had been returned

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under Illinois Practice, and Part II contains the Bill of Exceptions or the report of trial proceedings. Unless otherwise indicated by the letters "C.L.," all references to the Record are to Part II.

against Petitioner in 1953.[2] Petitioner was next brought to trial on indictment No. 54-839 which charged the death of Angeline. He was found guilty on the same evidence as was submitted by the prosecution in 53-2415 and in the instant case (R. 2). The jury imposed a sentence of forty-five years in the State Penitentiary (R. 2). Immediately thereafter the State Prosecutor announced that, "we are very disappointed, as we were in the first trial, . . ." ". . . we are going to try the two other cases. Nothing short of the death penalty will satisfy the State and we hope to get a jury that will realize the magnitude of this crime" (Appendix E).

Petitioner was next brought to trial on the indictment at bar which charged him with the murder of his son Vincent. This was the third attempt of the State to obtain a death sentence against Petitioner. However, this ended in a mistrial (R. "C.L.". 5). The fourth trial on the same indictment went to a jury which returned a verdict finding defendant guilty and imposing the death sentence (R. 354). There is still pending in the trial court indictment No. 54-840 which charges Petitioner with the murder of Virginia, his daughter (R. 7).

At the outset of the fourth trial, the Petitioner by a motion to dismiss (R. 2-3) raised federal constitutional questions concerning his being subjected to a trial on the same facts which had been submitted to two other juries and which had resulted in two sentences for the same alleged crime (R. 2-3). Petitioner in his motion stated

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[2] At the time of the motion to *nolle*, there were in fact six pending indictments against Petitioner. Although the experiences of the first trial had served as a training ground for presentation of evidence against Petitioner, the State's Attorney did not move to dispose of the pending indictments until three more were returned by the Grand Jury (See Appendix D new article, Chicago Sun-Times, Sunday, March 21, 1954).

that ". . . the alleged facts and evidence upon which the instant indictment number 54-839 is based, are the same; that a trial in this instant case will be a retrial of the above and foregoing two named indictments, viz.: 54-841 and 53-2415; that a trial in the instant case would place the defendant in jeopardy twice for the same offense, in violation of his Constitutional rights . . ." (R. 3). The Petitioner also moved for the exclusion in the instant trial of evidence of deaths other than the one alleged and described in the present indictment (R. 3-4).

The allegations contained in Petitioner's motions were not denied by the State. The position of the State was that the offense charged in the instant indictment was separate even though the evidence of the death of each of the four persons found dead on December 5, 1953 in Petitioner's home was inseparable (R. 9-14). The legal contention of the State was that the evidence was ". . . so interwoven by the circumstances as to be all logically a part of the testimony of each of the four . . ." (R. 11).

After hearing Petitioner's arguments on the motions, the trial court overruled Petitioner's assertion of federal constitutional rights (R. 14). The rulings of the trial court were preserved in Petitioner's motion for a new trial which was denied (R. 357-363). The federal constitutional issues were presented to the Supreme Court of Illinois, and the asserted federal rights were rejected (R. 372-373). The federal questions preserved were again rejected by the Supreme Court of Illinois upon ruling on Petition for re-hearing (R. 374-375).

The Petition for Certiorari was filed on December 11, 1956, and on June 3, 1957 this Court granted Petitioner's motion for leave to proceed *in forma pauperis* and granted the Petition for Writ of Certiorari to review the judgment of the Supreme Court of Illinois, 353 U.S. 982, 77 S.Ct. 1286.

(b) *Questions presented below.*

The Petitioner in his brief before the Supreme Court of Illinois, as errors relied upon for reversal, urged that the trial court judgment deprived him of rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States when the trial court denied Petitioner's motion to dismiss indictments on the ground of former jeopardy, the motion to exclude all evidence of deaths other than the one forming the basis of the indictment, and the motion to consolidate causes. Petitioner claimed deprivation of federal constitutional rights by action of the State of Illinois which subjected Petitioner to a series of four trials for the same alleged criminal transaction.

In oral argument, and in written brief, Petitioner urged as ground for reversal, the contention that the conviction and sentences of the Petitioner in the trial court denied him the immunities guaranteed to him by the Fifth and Fourteenth Amendments to the Constitution of the United States and by Article II Section 2 of the Constitution of the State of Illinois.

The Supreme Court of Illinois passed on the federal constitutional questions (R. 371-372).

On Petition for Rehearing, the Petitioner reasserted the federal constitutional questions by calling the attention of the court to the fact that the court in its opinion had inadvertently misapprehended the federal constitutional point of defendant's brief and had overlooked the argument of Petitioner where the Petitioner had said: "We do not consider determinative of the constitutional questions asserted that defendant's case does not fall into the established rules of double jeopardy. The gravamen of the wrong concerning which the defendant complained was the multiple form of the prosecutions against him elected by the State. The series of prosecutions arose out

of the singular event; the deaths of his wife and his three children. It was not the claim of double jeopardy which the defendant asserted in Point X. It was the denial of due process of law and equal protection of the laws resulting from the method of prosecution adopted by the State which deprived the defendant of the benefit of well established rules of Illinois Criminal Law" (R. 374-375).

Summary of Argument

I.

A. This court has not had the occasion to decide the federal questions inherent in Petitioner's case. In *Palko* v. *Connecticut*, 302 U.S. 319 the kind of double jeopardy which would violate the Fourteenth Amendment to the Constitution of the United States was left for consideration by this court in the reservations made by Mr. Justice Cardozo.

However, this court has on occasion decided cases dealing with definition of offenses. These cases did not involve review of state court action nor was there involved the double jeopardy principle as related to the scope of the Fourteenth Amendment.

B. The decisions of the highest courts of some of the states do not aid in determining the federal constitutional questions inherent in Petitioner's case. There is pathetic confusion in American case law concerning double jeopardy. This perhaps is an understatement. The conflict in case law of double jeopardy is recognized by several appellate courts of our states. The development of the law of double jeopardy, and the cases within the "majority" and "minority" viewpoint present all the possible facets of the double jeopardy doctrine. This court has before it *People* v. *Bartkus* (No. 39, this Term), *State* v. *Hoag* (No. 40, this Term), and *Ladner* v. *United States* (No. 41, this Term) as examples. Although Petitioner's case does not res

entirely on the Fourteenth Amendment protection against double jeopardy, it is best to discuss the state cases and put aside American case law before presenting the Fourteenth Amendment due process contentions of Petitioner. These contentions will determine Petitioner's case before this court.

B. (2) It is obvious that if this court were to adopt the reasoning in the cases decided by the highest courts of some of the states, it will result in negation of the federal constitutional protection against the kind of double jeopardy to which Petitioner was subjected by the State of Illinois. Beginning with *People* v. *Allen*, 368 Ill. 368 14 N.E. 2d 397 and through one of the most recent state cases, *Burton* v. *State*, —— Miss. ——, 79 So. 2d 242 (1955), these decisions represent cases in which state courts subordinated the double jeopardy plea to practical problems peculiar to local law administration. None of these cases represent instances in which the double jeopardy doctrine was properly applied, and none of them represent cases in which adequate federal constitutional questions were raised.

B. (3) The decision of this court in *Palko* v. *Connecticut*, expressly reserved for consideration the kinds of double jeopardy by a state which would violate provisions of the Fourteenth Amendment to the Constitution of the United States. The case made out by Petitioner falls within the reservations contained in the language of Mr. Justice Cardozo in *Palko*. Immunity from the kind of state action to which Petitioner was subjected by the State of Illinois is part of the protections to which Petitioner is entitled and it is part of the pledge which the State of Illinois accepted by its adoption of the Fourteenth Amendment to the Constitution of the United States.

Without this immunity from arbitrary state action of this kind, ordered liberty would not be possible. The multiple prosecutions to which Petitioner was subjected by

the State of Illinois, if considered a part of state criminal law procedure, would preclude the administration of a fair system of criminal justice in the State of Illinois.

The instances in which this court has said that the Fourteenth Amendment does not include prohibitions against state imposed double jeopardy, were cases in which the court was discussing technical and specific aspects of double jeopardy which this court said did not violate the Fourteenth Amendment to the Constitution of the United States. The aspects of double jeopardy represented in *Palko, Resweber and Brock* were not proscribed to the states by the Fourteenth Amendment to the Constitution of the United States. This is simply because the kind of double jeopardy manifested by those cases was not so shocking or acute as to violate our sense of fairness in state court criminal procedure.

This cannot be said of the case made here by Petitioner. Petitioner's case is within the protective line of the Fourteenth Amendment to the Constitution of the United States as stated by Mr. Justice Cardozo in *Palko,* because the form of double jeopardy to which Petitioner was subjected by the State of Illinois is so shocking as to violate our fundamental sense of fair play in state court criminal procedure. This court has never said that there cannot be a kind of double jeopardy which would violate the Fourteenth Amendment.

II.

A. The principal federal constitutional question presented by Petitioner is whether he was denied due process of law in violation of the Fourteenth Amendment to the Constitution of the United States by the multiple trials to which he was subjected in the state court of Illinois. In presenting this case to the court invoking the Fourteenth Amendment to the Constitution of the United States, Peti-

tioner urges rejection of technical distinctions between "act" and "offense" and relies upon constitutional provisions that secure to him a fair trial in the courts of the state. The due process of law clause of the Fourteenth Amendment precludes the kind of state action to which Petitioner was subjected. It denied to Petitioner a fair trial and denied to him due process of law.

B. It does not matter that the charges against Petitioner were four separate offenses or a single offense. Petitioner's complaint is that the State of Illinois denied him due process of law when it subjected him to four separate trials under three separate indictments. Each of these indictments charged the alleged murder of one individual, but by a rule evidence, the State of Illinois confronted Petitioner with proof that he had murdered four members of his family. This, even though the allegations of the indictment charged that he had murdered one named member of his family. This procedure was like bringing defendant to trial on a charge that had not been made and convicting him for an offense for which he had not been accused. It is elementary that in such a case this kind of state action would infringe upon the rights guaranteed to Petitioner by the Fourteenth Amendment to the Constitution of the United States. This is exactly what happened to Petitioner in the state court trial concerning which he complains.

C. The multiple trials to which Petitioner was subjected deprived Petitioner of a fair and impartial trial and denied him due process of law because Petitioner was not able to meet and defend the charges against him by the increased number of trials to which he was subjected. The unfair and prejudicial consequences that resulted from the multiple trials are numerous. One of them was that the Petitioner was deprived of testimony which he could have given for himself after he was found guilty of murdering his wife because in any trial for the alleged murder of one

of his children, upon his testifying, it could be shown to the jury, on cross examination of him, or by impeachment that he had been found guilty of murdering his wife. Another unfair and prejudicial consequence was that the number of trials impoverished Petitioner so that he could not afford counsel, or afford means to properly defend himself. Another unfair and prejudicial consequence is that the passage of time dissipated evidence which could have had favorable results in this trial. Another unfair and prejudicial consequence was that the multiple trials gave the prosecution opportunities to improve upon the method of proof so that the penalties progressively increased, finally resulting in extreme penalty. Finally, the Petitioner was subjected to a vindictive method of prosecution determined upon by an over-zealous state prosecutor who decided on his own that only a death sentence would be a proper penalty for Petitioner, even though two juries had refused to consider such a penalty.

III.

A. When considered in its entirety the case presented here by Petitioner is so shocking in its consequences that it presents a departure from fair state criminal court procedure, as required by the provisions of the Fourteenth Amendment to the Constitution of the United States. One of the immunities secured to a citizen of the United States by the Fourteenth Amendment to the Constitution of the United States is a fair trial in a State court, a trial consistent with established criminal procedure free from bias or hatred imposed upon Petitioner by a state officer. Implicit in the Fourteenth Amendment of the Constitution of the United States is this immunity which forms a part of ordered liberty. Without liberty or justice could not exist. For these reasons the federal constitutional protection invoked here cannot be denied to Petitioner.

B. It devolves upon this court to review the case presented here by Petitioner and to pronounce the applicable federal constitutional doctrines which will serve as a guide to future state court prosecutions in cases like his. The grant of review by this court is an occasion for a pronouncement on federal constitutional protection that will secure Petitioner and others like him due process of law in state court criminal proceedings within the full meaning of the Fourteenth Amendment to the Constitution of the United States. These guarantees are essential to liberty and justice and to a fair and enlightened system of criminal law administration. They flow from the Fourteenth Amendment to the Constitution of the United States and impose limitations upon arbitrary state action of the kind to which Petitioner was subjected.

Argument

I.

The Federal Constitutional Questions Which Petitioner Presents for Review Reach Beyond the Double Jeopardy Doctrine; But the Case Made Out by Petitioner Has Appropriate Location Within the Protections of the Fourteenth Amendment and in Reservations Made by Mr. Justice Cardozo in Palko v. Connecticut.

A. This Court Has Not Decided the Federal Questions Inherent in Petitioner's Case.

This court has never decided the precise federal constitutional question presented by Petitioner's case. In *Palko* v. *State of Connecticut*, 302 U.S. 319 at 328, Mr. Justice Cardozo speaking for a majority of the court said, "... What the answer would have to be if the state were permitted after a trial free from error to try the accused over again or to bring another case against him we have

no occasion to consider. We deal with a statute before us and no other. The state is not attempting to wear the accused out by a multitude of cases with accumulated trials. It asks no more than this, that the case against him shall go on until there shall be a trial free from the corrosion of substantial legal error . . ." In the *Palko* case this court sustained a death sentence against the defendant that had been imposed after a reversal, the reversal had followed an appeal taken by the state pursuant to a Connecticut statute.

This court, however, has had before it several cases presenting issues that required a definition of offenses: In *Burton* v. *U. S.*, 202 U.S. 344, the construction of a federal statute was involved. *Gavieres* v. *U. S.*, 220 U.S. 338, was a case in which this court determined the applicability of the double jeopardy plea after a conviction under an ordinance of the City of Manila and a later indictment under a Philippine Island statute. It was decided that the two prosecutions against *Gavieres* were for different offenses. In *Ebeling* v. *Morgan*, 237 U.S. 625, this court held that opening six mail bags constituted six separate and punishable offenses under the applicable federal statute. In *Morgan* v. *Devine*, 237 U.S. 632, this court construed two federal statutes and determined that the prosecutions were for separate offenses. None of these cases involved review of state court action, nor was there involved any aspect of the double jeopardy principle as related to the scope of the Fourteenth Amendment.

B. THE CASES DECIDED BY THE HIGHEST COURTS OF SOME OF THE STATES ARE NOT HELPFUL IN DETERMINING THE FEDERAL CONSTITUTIONAL QUESTIONS INHERENT IN PETITIONER'S CASE.

(1) *There is pathetic confusion in American case law on the application of the double jeopardy doctrine.*

It is perhaps an understatement to say that there is pathetic confusion in American case law of double jeopardy. For example, in 1937 when the Supreme Court of Illinois decided *People* v. *Allen*, 368 Ill. 368, 14 N.E. 2d 397 the court said:

> "... We recognize the conflict among decisions in other jurisdictions. Some of them are opposed to the views expressed by this court. Many of them are based upon provisions of local laws. Some of them have in effect, been nullified by later decisions of the same tribunals, and others have been criticized by adverse holdings in other jurisdictions ..."

In 1943 the Supreme Court of Virginia in deciding *Lawrence* v. *Commonwealth*, 181 Va. 582, 26 S.E. 2d 54, observed that, "... the courts are in hopeless conflict when it comes to the solution of the problem of identity of offenses ..." The Supreme Court of Florida in *McHugh* v. *State*, 160 Fla. 823, 36 So. 2d 786 (1948), speaking of the issues presented to it on a double jeopardy plea, said, "... briefs have been filed which reveal numerous cases in hopeless conflict ..." By 1949, a reputable authority felt compelled to say that "... the inelastic approach of the judiciary to double jeopardy pleas in the past indicates that they may not prove to be reliable overseers. Courts have generally ignored such pleas, relying on the stereotype formula, the

"same evidence" test, which prescribes denial of the double jeopardy contention if the second charge is so drawn as to be hypothetically provable by different evidentiary facts. As presently used, the test leads not only to unpredictable results, but also is slowly eroding a procedural objective which deserves to be upheld—the finality of criminal judgments. Unavoidable though the act—offense dichotomy may be, we should not permit its being manipulated so as to endanger this objective . . .". Kirchheimer, *The Act, The Offense and Double Jeopardy*, 58 Yale L.J. 513, 515 (1949).

It is evident that through a slow evolving process, there has developed in this important area of constitutional law a "majority" and "minority" viewpoint which are best illustrated by the 1956 opinions of the Supreme Court of New Jersey in *State* v. *Hoag*, 21 N.J. 496, 122 A. (2d) 628 (No. , this Term). Not only have these cases blurred the distinction between multiple prosecutions and multiple punishments, but they have by an interesting development covered all the possible facets of the double jeopardy doctrine. As examples, this court has before it the judgment of the Supreme Court of Illinois in *People* v. *Bartkus*, 7 Ill. 2d 138, 130 N.E. 2d 187 (No. 39, this Term), *State* v. *Hoag*, *supra*, from the Supreme Court of New Jersey; and, from the 5th Circuit, *Ladner* v. *United States*, 230 F. (2d) 726 (No. 41, this Term). Although the federal constitutional questions inherent in Petitioner's case do not rest entirely on the asserted 14th Amendment protection against the kind of double jeopardy to which he was subjected by the State of Illinois in the case at bar, it is proper, we think, that we first discuss the contentions of Petitioner against the background of this confused state of American case law and demonstrate the applicability of the 14th Amendment to him and to others like him. We concede that there are cases from the highest state courts which upon superficial analysis seem to uphold the doctrine that the test of federal

constitutional protection against double jeopardy is the identity of the offense as distinguished from the identity of the act. By this process, we submit, we will put aside American case law and proceed to the 14th Amendment, due process of law contentions of the Petitioner which we believe will determine the federal constitutional questions presented by the shocking facts of this case.

(2) *The reasoning in the cases decided by the highest courts of some of the states if followed by this court will negate the federal constitutional protection against the kind of double jeopardy to which Petitioner was subjected by the State of Illinois.*

In the case at bar the theory of the prosecution was that the defendant killed four members of his family. Therefore, each death was a separate offense, even though evidence of the deaths of the entire four was inseparable (R. 9-13). In the trial court the prosecution relied on *People* v. *Allen*, 368 Ill. 368, 14 N.E. 2d 397; and in rejecting the federal constitutional questions presented by Petitioner, the Supreme Court of Illinois cited that case as its only authority. The *Allen* case applied the "act—offense dichotomy" and the "same evidence" test. We think that the reasoning of the Supreme Court in the *Allen* case furnishes a proper starting point to demonstrate the unreliability of the state court decisions as predicates for the application of the federal constitutional protection against double jeopardy.

First, a resort to relevant history. The "same evidence" test had its origin in the early British case *Rex* v. *Vandercomb and Abbott*, 2 Leach 708, 168 Eng. Rep. 455 (1796). That this test has had its difficulty in English criminal law administration is evident from later decided cases. See: *Rex* v. *Sheen*, 2 C & P 634, 172 Eng. Rep. 387 (1827); *King*

v. *Clark*, 1 Brod. & B 437, 129 Eng. Rep. 804 (1824); *Rex* v. *Kupferberg*, 13 Crim. App. R. 166 (1918). In this country the rule of the *Vandercomb* case was first adopted by the Supreme Court of Maine in *State* v. *Brownrigg*, 87 Me. 500, 33 Atl. 11 (1895).

With regard to the origins of the plea of double jeopardy which the Supreme Court of Illinois rejected in Petitioner's case, we find that Blackstone said, " . . . it is to be observed that the pleas of *autrefois* acquit or *autrefois* convict, or a former acquittal, and former conviction, must be upon a prosecution for the same identical act and crime . . . ." Shortly after the Commentaries by Blackstone, we find that the earliest case in which the contention of a prior adjudication was raised was *Rex* v. *Duchess of Kingston*, 20 How. St. Tr. 355 (1776). These legal concepts, in whatever shading, are ancient and they are found in all advanced systems of law. A.L.I. *Double Jeopardy* (1935), Introductory Note, R. 7. Nonetheless, in rejecting Petitioner's plea of former jeopardy, the Supreme Court in its opinion (R. 371-372) said:

> "It is assigned as error that the court denied a 'motion to dismiss' on the grounds of former jeopardy. Defendant had been tried and convicted in two previous trials for the murders of his wife and daughter respectively. He now argues that the two former prosecutions were for the same offense as the present one, and hence operate as a constitutional bar to his prosecution. The long establishment test for former jeopardy, however, is whether the facts charged in the latter indictment would, if found to be true, have justified a conviction under the earlier indictment. (*People* v. *Allen*, 368 Ill. 368.) When this test is applied here it is obvious that under the indictment for murder of his wife a verdict could not be sustained finding him guilty of murdering his son. It is the identity of the offense, and not of the

act, which is referred to in the constitutional guarantee against double jeopardy: And where two or more persons are unlawfully killed, even though by a single act, there is a corresponding number of distinct offenses. (*People* v. *Allen*, 368 Ill. 368.)"

The *Allen* case was decided by the Supreme Court of Illinois in 1937. Students of the subject have placed it in the "majority view" category with those cases holding that the test determining the applicability of the double jeopardy plea is not the identity of the act, that it is the identity of the offense. 8 Ala. Law Rev. 372.

Carefully examined the *Allen* decision is not persuasive authority for rejecting Petitioner's contention that the plea and double jeopardy applied to his case (R. 2-14). *Allen* killed two men in an automobile accident on one of Chicago's streets. He was first indicted for the manslaughter of one of the men killed in the accident. For reasons not clear, he was not brought to trial within the four months required by Illinois Law. On motion properly made, he was discharged. *Allen* was then indicted on a second indictment charging manslaughter of the other of the two men. When brought to trial, *Allen* interposed the plea that he had been put in jeopardy in the first indictment that had been dismissed. This plea the court rejected. *People* v. *Allen*, 368 Ill. 368, 14 N.E. 2d 397.

It is obvious from reading the *Allen* case that the court was confronted with a practical problem dealing with what appears to be a fumble by the prosecutor. What is more intriguing is the reasoning of the court that a dismissal of a case for want of prosecution subjected the defendant to jeopardy. This holding is contrary to the weight of opinion in American case law. Anno: *"Delay in Trial—Discharge—Effect,"* 50 A.L.R. 2d 943, 957, 958. This point aside, however, it is obvious that the court there subor-

dinated the constitutional question to the pragmatic problem of criminal law administration and rejected the double jeopardy plea preferring to make amends through judicial reasoning for what obviously was a mistake by the prosecutor. It doesn't take too much imagination to see that *People* v. *Allen, supra,* would never have been part of Illinois case law if the prosecutor had done his duty in the first indictment charging *Allen* with manslaughter.

As in the *Allen* case, all of the decisions of the highest courts of our State adopting the so called "majority view" represent attempts by the courts to solve some practical local problem of criminal law administration at the expense of constitutional questions involving double jeopardy. For example, in *State* v. *Fredlund* (1937), 200 Minn. 44, 273 N.W. 353, 113 A.L.R. 125, the court was concerned with the problem of proper punishment in a multiple manslaughter case. In *Fleming* v. *Commonwealth,* 284 Ky. 209, 144 S.W. 2d 220 (1940) the defendant was first indicted and convicted of involuntary manslaughter of one Duvall who was killed at the same time that another man, Dakota Stapleton, was killed in an automobile accident. The first charge, the record shows, was on an indictment charging involuntary manslaughter of Duvall. The record shows that the defendant apparently ran down Dakota Stapleton before he hit Duvall. Evidently someone thought it necessary to punish defendant for what appeared to be a deliberate act. He was then indicted for the voluntary manslaughter of Stapleton. The double jeopardy plea in the Stapleton prosecution was rejected. We observe, however, that the Supreme Court of Kentucky reversed the conviction on other grounds. Again, as in cases similar, the practical problem of administering the criminal law was present in the *Fleming* case. *Jeppersen* v. *State,* 154 Neb. 765, 49 N.W. 2d 611 (1951) was a multiple death case arising out of a car collision. The Supreme Court of Nebraska reversed the conviction with

directions to dismiss the prosecution although it rejected the plea of double jeopardy. The case represents another instance of the "act—offense dichotomy".

McHugh v. *State*, 160 Florida 823, 36 So. 2d 786 (1948) represents a case in which the defendant was acquitted of manslaughter resulting from culpable negligence arising out of an automobile collision. Then *McHugh* was prosecuted for manslaughter arising from the operation of a motor vehicle while intoxicated. Two boys were killed in the automobile accident. The court there used the "identity of offense test" but it is obvious that the charges were different. Again this case represents an instance of criminal law administration and a subordinate relegation of constitutional protection against double jeopardy to the problem of criminal law administration to meet local conditions.

Variants of these cases are collated and annotated in 20 A.L.R. 341, 113 A.L.R. 215, 222 and 172 A.L.R. 1050, 1062. We are constrained to observe that the development of the automobile and the increase in multiple deaths arising out of automobile accidents have given momentum to and need for the "act—offense dichotomy" reasoning.

Beginning with *State* v. *Taylor*, 185 Wash. 198, 62 P 2d 1252 (1936), to *Burton* v. *State*, —— Miss. ——, 79 So. 2d 242 (1955) these cases show the impact of the development of the automobile upon a kind of "split personality" reasoning in American case law. We believe, however, that these cases can be put aside as examples of state courts dealing with law administration of the moment. They are not cases construing the application of the federal constitutional protection against double jeopardy.

In none of these cases was there raised a clear-cut federal constitutional question. The so called "minority view" consists of cases in which the opposite results were reached. For example, *State* v. *Wheelock*, 216 Iowa 428, 250 N.W.

617, was a multiple death case in which three persons were killed in an automobile accident. There the court held that the manslaughter of three persons was a single offense. *People* v. *Barr*, 250 N.Y. 104, 181 N.E. 64, involved the prosecution for manslaughter of ten persons killed in a fire caused by negligence in failing to install sprinklers. There too, the court held the multiple deaths were a single offense. *Woodford* v. *People*, 62 N.Y. 117, 20 A.M. Rep. 464, was a case in which the court held that there was a single offense when arson of one building resulted in burning thirty-five other structures. In this same category of cases is *Commonwealth* v. *Veley*, 63 Pa. Super. 489, *State* v. *Cosgrove*, 103 N.J.L. 412, 135 A. 871 and *State* v. *Cooper*, 13 N.J.L. 361, 25 Am. Dec. 490.

These cases represent inconsistency in another important respect: the application of the "act—offense dichotomy" to different classes of crimes. In Kentucky, Massachusetts and Oklahoma where the "act—offense dichotomy" has been applied to multiple death cases, *Fleming* v. *Commonwealth* (1940), 284 Ky. 209, 144 S.W. 2d 220; *Commonwealth* v. *Maguire* (1943), 313 Mass. 669, 48 N.E. 2d 665; *Fay* v. *State* (1937), 62 Okla. Crim. 350, 71 P 768, the appellate courts of these states have held that stealing of property from different owners at the same time and at the same place constitutes one larceny and one offense. *Nichols* v. *Commonwealth* (1879), 78 Ky. 180; *Jacobs* v. *Commonwealth* (1935), 260 Ky. 142, 84 S.W. 2d 1; *Bushman* v. *Commonwealth* (1885), 138 Mass. 507; *Tucker* v. *State* (1912), 8 Okla. Crim. 428, 128 P 313. The cases on this subject and their variants are collected in Anno. *Larceny—Identity of Offenses*, 28 A.L.R. 2d 1182.

In Illinois where the Supreme Court has ruled that manslaughter of two persons in one single automobile accident is a multiple crime precluding application of the double

jeopardy plea, *People* v. *Allen, supra,* the Supreme Court has held that robbery of several persons at a social gathering at the same time and place constitutes a single offense. *People* v. *Perrello,* 350 Ill. 231, 182 N.E. 748 (1932). In New Jersey where it has been held that a motorist accidentally killing one person and injuring another in an automobile accident committed a single offense, *State* v. *Cosgrove,* 103 N.J.L. 412, 135 A. 871, and where a plea of *autrefois* convict was sustained to an indictment for murder, the defendant having been previously convicted of the crime of arson which caused the death of the person for whose murder he was indicted, *State* v. *Cooper,* 13 N.J.L. 361, 25 Am. Dec. 490, the Supreme Court of that state recently held that the robbery of four persons at a tavern at the same time and at the same place was a multiple crime and the defendant could be prosecuted by four separate indictments. *State* v. *Hoag,* 21 N.J. 496, 122 A. 2d 628 (1956), (No. 40, this Term).

In commenting on this peculiar result in legal reasoning, it has been said that " . . . it would be difficult to analyze the reason for this difference in approach to larceny, as distinct from robbery, except that it is self evident that the courts will apply the criminal law with maximum effort to secure the safety of society from armed robbery and the resulting death from innocent victims which has often been found to attend violent felonies. The criminal laws, however, are not invoked to punish harm done to individuals as such, but rather to impose sanctions for crimes done against the State and against the public . . . " 14 Wash. & Lee Law Rev. (1957) 89-85.

This observation on a current case finds support in Blackstone who said that, " . . . a crime or misdemeanor, is an act committed to omitted, in violation of a public law, either forbidding or commanding it . . . "

"The distinctions of public wrongs from private, of crimes and misdemeanor, from civil injuries seems principally to consist in this: that private wrongs, or civil injuries, are an infringement of the privation of civil rights which belong to individuals, considered merely as individuals; public wrongs or crimes and misdemeanors, are a breach and violation of the private rights and duties due to the whole community, considered as a community, in a social aggregate capacity . . ." 4 Black. Com. 3 (Bk. 4 Ch. 1, p. 3).

It may well be, and we respectfully make the suggestion that the federal constitutional questions here presented by Petitioner will require a consideration of the meaning of the word "act" and the word "offense" as it was used at the time of the adoption of the Fifth Amendment to the Constitution of the United States. We have already cited *Blackstone* who said in his definition of *autrefois* acquit and *autrefois* convict as being applicable ". . . upon a prosecution for the *same identical act and crime* . . ." 4 Black. Com. 336. Chitty said that an offense was ". . . the *doing* that which a penal law forbids . . ." 1 Chitty, Pr. 14 The emphasis is on *act* not *crime*.

In a very early American case, *Edwards* v. *Turner*, 6 Rob. (La.) 382 it is said that, ". . . offenses are those illegal acts which are done wickedly and with an intent to injure . . ."

These are not isolated sources of definitions chosen for the purpose of argument. They are conveniently cited to illustrate the point that, ". . . with the ever-expanding number of statutory offenses the protection provided by this principle (the doctrine of double jeopardy) becomes less and less since the doctrine applies only where the defendant is twice placed in jeopardy for the *same offense*

Under rules generally applied by the courts in determining whether the same offense is being charged, the prosecutor may, with little imagination and even less research, reindict for a different offense if his first venture was unsuccessful, even though the defendant is being retried for essentially the same anti-social conduct . . . " Lugar, *Criminal Law, Double Jeopardy and Res Adjudicata* (1954) 30 Iowa Law Rev. 317. Note, 7 Brooklyn Law Rev. 79, 82 (1937). In the case made out by Petitioner, three attempts to obtain a jury verdict imposing the death penalty were unsuccessful.[3]

The charges were the same (R. 2-14), the evidence was the same and was so inseparable that proof of the deaths of all four was made at the trial of Petitioner under each indictment charging murder of one (R. 2-14). Similarity in the cases, the charges, the evidence and the issues were ignored when Petitioner's motions attacking the multiple trials were overruled (R. 2-14). In affirming, the Supreme Court of Illinois applied the "same or different evidence" test. We contend that it was the duty of the court to " . . . evaluate as well as spell out the difference, and determine whether the element it affects is sufficiently important in relation to the other elements involved in both crimes to justify refusal to apply the constitutional protection . . . " Rutledge, Justice, concurring in *District of Columbia v. Buckley* (1942), 75 App. D.C. 301, 128 F 2d 17, 21, cert. denied, 317 U.S. 658. It is evident that the reasoning of the

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[3] Petitioner was tried first for the murder of his wife. He was found guilty and sentenced to serve a twenty year sentence in the Illinois Penitentiary (R. 2). He was next tried for the murder of one of his two daughters. He was found guilty and sentenced to a term of 45 years (R. 2). He was next brought to trial on a third attempt. This ended in a mistrial (R. "C.L." 5). The case at bar was the fourth time Petitioner was brought to trial, and this ended in a verdict finding Petitioner guilty of the murder of his son and imposing the death sentence.

Supreme Court of Illinois overlooked the aspects of Petitioner's case which furnished fundamental bases for applying the constitutional protections to which Petitioner was entitled. The test applied served to negate applicable federal constitutional protection requested and claimed by Petitioner. For these reasons the judgment of the Supreme Court of Illinois cannot stand.

(3) *The decision of this court in* Palko v. Connecticut *expressly reserved for consideration kinds of double jeopardy by a state which would violate the provisions of the Fourteenth Amendment to the Constitution of the United States. The case made out by Petitioner falls within the reservations contained in the language of Mr. Justice Cardozo in* Palko.

One fact is obvious: the kind of double jeopardy to which Petitioner was subjected in this case was no accident of criminal law administration. Appendices "A" to "F" which are attached to this brief show that the state's attorney was determined to get a death penalty against Petitioner. This, despite the refusal of two juries to return a death verdict (Appendices "B", "D", "E" and "F"). A test run of the proof had been made in the first case and the indictments were found faulty. New indictments were obtained (R. 6). Then the decision was made to try Petitioner "one by one to a total of three . . . " (Appendix "D"). Petitioner was to be tried again " . . . and again and again and again, if needed . . . " (Appendix "A"). After Petitioner was tried the second time (R. 2), the prosecutor announced that " . . . We are going to try the other two cases. Nothing short of the death penalty will satisfy the state . . . " (Appendix "E").

We are reminded of the almost prophetic words of Mr. Justice Murphy in *Adamson* v. *California*, 332 U.S. 46, 74:[4] "... occasions may arise where a proceeding falls so far short of conforming to fundamental standards of procedure as to warrant constitutional condemnation ..." Petitioner's case here made out presents such an occasion. The final power to determine the impact of the occasion on any provision of the federal constitution rests in this court. *Cohens* v. *Virginia* (1821), 6 Wheat. (U.S.) 264; *Martin* v. *Hunter's Lessee* (1816), 1 Wheat. 304.

In deciding the substantive federal question raised by Petitioner we believe this court will be considering the kind of double jeopardy case Mr. Justice Cardozo reserved in *Palko* v. *Connecticut, supra.* However, we do not need to contend here, as did *Palko*, that, "... Whatever would be a violation of the original bill of rights (Amendments 1 to 8) if done by the federal government is now equally unlawful by force of the Fourteenth Amendment if done by a state." *Palko*, 302 U.S. 319, 323. For our case, we think the Fourteenth Amendment encompasses and protects Petitioner from the kind of double jeopardy to which he was subjected by the State of Illinois. The Amendment in our judgment needs infusion of no greater protective scope than that which the framers originally intended. *Palko* v. *Con-*

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[4] We do not believe it necessary to raise again the issues in *Adamson* v. *California*, 332 U.S. 46 concerning the history of the 14th Amendment and the incorporation of the first eight amendments into the 14th. See, however, the dissenting opinion of Mr. Justice Black in *Adamson* v. *California*, 332 U.S. 46 at page 74. While we do not consider the question necessary to our case, this court may find this the occasion to reconsider the opposing views in *Adamson*.

In this connection, see: Flack, *The Adoption of the Fourteenth Amendment*, 1908. Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction*, 39th Cong., 1865-1867 (1914). Green, *Bill of Rights*, the *Fourteenth Amendment* and the Supreme Court, 46 Mich. Law Rev. 869 (1948).

necticut, supra; Adamson v. *California, supra;* Mr. Justice Black, dissenting in *Adamson,* 332 U.S. 46, 74.

At the risk of being over-emphatic, we call this court's attention to limiting language of Mr. Justice Cardozo in *Palko* v. *Connecticut.* The scope of the decision was limited to that kind of double jeopardy represented by the *Palko* case. When this court there held that the Fourteenth Amendment did not protect a citizen of the United States from state imposed double jeopardy, this court was only holding that constitutional protection against the *Palko* kind of double jeopardy was not included in the Fourteenth Amendment to the Constitution of the United States. But the kind of multiple prosecution to which the defendant was subjected by the State of Illinois, a prosecution in which the State was permitted, " . . . after a trial free from error to try the accused over again . . . " and bring another case against him, is the kind of double jeopardy which would fall within the line which as a unifying principle puts Petitioner's case within the Fourteenth Amendment and distinguishes it from those outside its purview. Thus, in this contention we are consistent with the decision of this court in *Palko.* The kind of double jeopardy to which the Petitioner here was subjected by the State of Illinois, the form and substance of multiple trials for the same alleged criminal act, after a trial free from error, is the kind of double jeopardy which shocks our sense of fundamental fairness in criminal prosecutions. This is the standard of fairness in criminal procedure which if abolished would violate, " . . . a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental . . . " *Snyder* v. *Massachusetts,* 291 U.S. 97, 114, 54 S.Ct. 330, 335.

We believe that one of the immunities secured to Petitioner by the specific pledge of the State of Illinois in adopting the Fourteenth Amendment to the Constitution of

the United States is the immunity from the kind of double jeopardy to which he was subjected in this case; and such immunity is implicit in our concept of ordered liberty. We believe that this was the thought that Mr. Justice Cardozo had in mind when he reserved for final consideration by this court the federal constitutional questions now brought by Petitioner.

Since the *Palko* case, the administration of the criminal law in this country has produced many problems. There have been " . . . significant developments in the law pertaining to criminal procedure; these procedural developments are measured to determine the extent to which they safeguard the rights of criminal defendants . . . " Moran, *The Future of The Criminal Law*, 11 Rutgers Law Rev. 549 (1957). Bigelow, *Former Conviction and Former Acquittal*, 11 Rutgers Law Rev. 487-506 (1957).

The legal and constitutional problems presented by cases like Petitioner's have not escaped the attention of students of the subject. For example, the American Law Institute has proposed a model criminal code that incorporates sound solutions to the problem of multiple prosecutions and multiple punishments. See A.L.I., Administration of the Criminal Law, Model Penal Code (Tentative Draft No. 5, April 27, 1956) pp. 29-43, 44-65. The A.L.I. proposals are the results of years of study. See: A.L.I., Administration of the Criminal Law, Proposed Final Draft on Double Jeopardy (1935), Section 5.

In the view of the A.L.I. codifiers, the kind of multiple prosecution to which Petitioner was subjected would not be permissible. This indicates a change in opinion concerning acceptance of doctrines which will serve to terminate criminal litigation in the same way we advocate disposing of issues in civil cases. As an indication of the change of popular opinion on this subject, a recent issue of the Har-

vard Law Review contained this observation: ". . . since a second prosecution for a similar offense will ordinarily not be instituted unless the first has been unsuccessful, collateral estoppel is usually raised by a defendant who had a favorable verdict in the first prosecution. In order that he be accorded the same protection afforded parties in civil actions, he should be freed from the necessity of relitigating an issue once decided in an earlier prosecution involving the same parties . . ." 65 Harv. L. Rev. 820, 875. In Petitioner's case every issue except the identity of the alleged victims had been litigated in the two earlier prosecutions The identity or number of victims do not justify the multiple prosecutions to which Petitioner was subjected.

(4) *The instances in which this court has said that the Fourteenth Amendment does not include prohibition against double jeopardy by a state were instances involving facets of double jeopardy unlike the kind to which Petitioner was subjected by the State of Illinois. This court has never said that the kind of double jeopardy to which Petitioner was subjected in this case will not violate the due process clause of the Fourteenth Amendment.*

We consider now relevant decisions of this court.

Recently, in *Kinsella* v. *Krugar*, 351 U.S. 470, 478 (1956), reversed after reargument, — U.S. —, 77 S.Ct. 1222 (1957), this court said ". . . in addition to the fundamentals of due process, it (the Uniform Code of Military Justice) includes protections which this court has not required a state to provide . . ." This passing reference was to *Palko* v. *State of Connecticut*, 302 U.S. 319, 58 S.Ct. 149. However, neither the language in *Palko* nor the language in any case decided by this court can be taken to mean that there are

no forms of double jeopardy by a state that will infringe upon the prohibitions of the Fourteenth Amendment. The pronouncements of this court are to be construed as meaning only that not every form of double jeopardy is proscribed by the Fourteenth Amendment to the Constitution of the United States.

The double jeopardy principle has nuances. American case law affords examples of its variants. The point at which " . . . jeopardy attaches . . . " has found interesting occurrences. It may be when the jury is sworn, *Cornero* v. *United States*, 48 F. 2d 69, or, not until the first witness is sworn, *Rosser* v. *Commonwealth*, 159 Va. 1028, 167 S.E. 257. In *Wade* v. *Hunter*, 336 U.S. 684 (1849), for instance, this court held that the fact a court martial trial was discontinued, before final action, because of " . . . the tactical situation . . . " of the command at which the court martial trial had been convened, did not preclude a second trial by court martial. Conviction in an appellate court after an acquittal below presented to this Court one form of double jeopardy in *Trono* v. *U. S.*, 199 U.S. 521, 26 S.Ct. 121. Conviction upon review after an acquittal by jury in the trial court presented another aspect of the doctrine in *Kepner* v. *U. S.*, 195 U.S. 100, 24 S.Ct. 797. Mr. Justice Frankfurter, concurring in *Francis* v. *Resweber*, 329 U.S. 459, 469 (1947) called attention to *Ex parte Lange*, 18 Wall. 163, 21 L.Ed. 872 and *In Re Bradley*, 318 U.S. 50, 63 S.Ct. 470 " . . . for the disputations that are engendered by technical aspect of double jeopardy as enshrined in the Fifth Amendment. . . . " To put it succinctly, within the orbit of the Fourteenth Amendment to the Constitution of the United States it is possible for a state to provide for appeals on questions of the law on behalf of the prosecution and not transgress the provisions of the Fourteenth Amendment. *Palko* v. *Connecticut*, *supra*. A state may make two attempts to execute a valid state court judgment, without transgressing

the limits of the Fourteenth Amendment. *Francis* v. *Resweber,* 329 U.S. 459 (1947). And, as this court recently held, a state court may discontinue a trial of a defendant, before proceeding to verdict, and subject the defendant to a second trial, without violating the Fourteenth Amendment and the immunities it includes as part of ordered liberty. *Brock* v. *North Carolina,* 344 U.S. 424 (1953).

Neither *Palko, Resweber* nor *Brock* fell within the proscriptions of the Fourteenth Amendment to the Constitution of the United States because within the limiting language of those decisions they were not cases " . . . so acute and shocking that our polity would not endure . . . " *Palko* v. *Connecticut, supra.* The case here made by Petitioner, however, the division of one alleged criminal act into four separate prosecutions to which Petitioner was subjected by the sovereign power of the State of Illinois solely for the purpose of obtaining the extreme penalty, falls within that line which Mr. Justice Cardozo had in mind, and it is the kind of case which he reserved in the decision rendered by this court in *Palko* v. *Connecticut, supra.*

In affirming Petitioner's conviction the Supreme Court of Illinois completely ignored an important fact when it rejected the federal constitutional questions urged by Petitioner. " . . . A former conviction raises problems different from those that grow from a former acquittal. And the bases of the two pleas are different . . . " Bigelow, *Former Conviction and Former Acquittal,* 11 Rutgers Law Rev. 487, 490 (1957). The distinction between former acquittal and former conviction has always been recognized in Anglo-American Law. Bishop's *Criminal Law* (1892 Ed.), Section 1054, *et seq.* Wharton's *Criminal Law*, Section 560. This court recognized this distinction in *Ex parte Nielsen,* 131 U.S. 176, 9 S.Ct. 672 (1889).

Simco v. *State* (1880), 9 Tex. App. 338, amply illustrates the point we here urge and the court's language accurately states the reasoning we think applicable to the case at bar:

"There is a marked difference in modern practice between the rules which govern the two pleas of *autrefois* acquit and *autrefois* convict, notwithstanding the immense amount of dictum and loose expression to the contrary found in the books. *Autrefois* acquit is only available in cases where the transaction is the same and the two indictments are susceptible of, and must be sustained by, the same proof. These two elements must combine, and are both sine qua non to the sufficiency of the plea. *Autrefois* convict only requires that the transaction, or the facts constituting it, be the same. To illustrate: If a party be indicted separately for the theft of three horses, the property of A, B, and C, taken at the same time or in one transaction, and he be tried on the first for the theft of A's horse, and the state fails from misnomer, or the defendant, by proving A's consent, should be acquitted, would the plea of that acquittal operate a bar to the conviction on the other trials because the transaction was one and the same? By no means. Why? Simply because the proof necessary to a conviction in the latter cases would not convict in the former . . . But suppose the party was convicted of the theft of any one of the horses, would a plea of former conviction be a bar to conviction on the other two indictments? Clearly so. And why? Because the transaction—the taking of the three horses at the same time—would constitute but one offense in law, . . . and the plea would be good upon the strength of, and by virtue of, another rule, well settled in criminal practice, which allows the prosecutor to carve as large an offense out of a single

> transaction as he can, yet he must cut only once. . . . Here is where the doctrine of carving would come in and support the plea."

Obviously, the fact that Petitioner had been twice convicted was ignored by the Supreme Court of Illinois. But for the views which have found acceptance in enlightened systems of criminal law administration, See: A.L.I. *Administration of the Criminal Law, Model Penal Code* (Tentative Draft No. 5, April 27, 1956), pp. 29-55, and the pronouncements of this court lead to the conclusion that to allow the State of Illinois to try the defendant over again after one conviction for the same alleged criminal transaction is to violate a fundamental "concept of ordered liberty" without which Illinois criminal procedure would not conform to a fair system of criminal justice. *Palko* v. *Connecticut,* 302 U.S. 319; *Snyder* v. *Massachusetts,* 291 U.S. 97, 105.

The defendant was convicted at his first trial (R. 2) for the alleged murder of his wife. Consideration of all the evidence involving the deaths of Petitioner's wife and his three children was given by the jury (Appendices "A"-"F"). Yet, the State prosecutor was not satisfied. In a shocking display of arbitrary state power for the sole purpose of obtaining the death penalty, Petitioner was subjected to multiple prosecutions.

Due process of law, encompassing the double jeopardy concept, will not allow and should not allow this kind of terroristic prosecution in the attempt to comply with misconceived notions of proper penalties which are rejected by triers of fact and juries duly empanelled. We respectfully submit that because of infringements upon Petitioner's rights under the Fourteenth Amendment which are shown here, this court should strike down this conviction and reverse it with directions to the highest court of the State

of Illinois that the cause be remanded to the trial court for vacation of the judgment and sentence of death entered against Petitioner.

II.

The Principal Federal Constitutional Question Presented by Petitioner Is Whether the State of Illinois Deprived Him of Due Process of Law When the State Subjected Petitioner to Four Separate Trials Under Three Separate Indictments Each Alleging the Murder of Four Alleged Victims of One Criminal Transaction.

A. In Presenting to This Court an Unusual Case Invoking the Protections of the Fourteenth Amendment to the Constitution of the United States, Petitioner Urges Rejection of Technical Distinctions Between "Act" and "Offense" and Rests His Case Upon Federal Constitutional Provisions That Secure to Him a Fair Trial in the Courts of the State.

We contend that Petitioner was subjected to a form of state action which denied him due process of law in the courts of Illinois when he was prosecuted in four separate trials under three separate indictments which differed only with respect to the name of the alleged victim of the crime charged in each indictment. Petitioner had been brought to trial in the indictment involved in the instant case and a mistrial resulted (R. "CL" 5). On January 3, 1955 (R. 1), he was brought to trial for the fourth time. In the first of two trials, one under the indictment charging him with the murder of his wife, and the second, on the indictment charging him with the murder of one of his two daughters (R. 2), Petitioner was sentenced to the Illinois State Penitentiary

for terms of 20 years and 45 years respectively (R. 2). It was after completion of the first trial that the state prosecutor discovered that new indictments were necessary. The present indictment, together with the ones charging murder of Petitioner's two daughters, was obtained in 1954 (R. 6-7).

It requires very little to demonstrate that the four prosecutions were a device hit upon by the state's attorney as the means by which a death sentence would be obtained against Petitioner (See: Appendices "A" to "F"). It is obvious, we submit, that Petitioner was not subjected to a trial in accordance with fair and orderly criminal procedure in a state court. *Brown* v. *Mississippi*, 297 U.S. 278. The indulgences by the prosecutor in the technical distinctions between the "act" and the "offense" (R. 9-14) were to hide the substance of unfair and oppressive state action to which Petitioner was being subjected.

It is true, as was said by the Supreme Court of Illinois in affirming (R. 371-372), that under an indictment charging Petitioner with the murder of his wife, a verdict would not be sustained finding him guilty of murdering his son. We believe this fact immaterial in determining whether constitutionally the Petitioner should be protected from the multiple prosecutions here shown.

The deaths of Petitioner's wife and his three children were discovered at the same time on December 5, 1953 (R. 30, 366). This is not a case in which the defendant concealed part of his alleged criminal acts. The fair and constitutionally consistent method of prosecution in such instance is codified in A.L.I., Administration of the Criminal Law, Model Penal Code (Tentative Draft No. 5, April 27, 1956), page 34, and it is said that the requirement of a single prosecution is " . . . designed to prevent the state from bringing successive prosecutions based upon essen-

tially the same conduct, whether the purpose in so doing is to hedge against the risk of an unsympathetic jury at the first trial, to place a "hold" upon a person after he has been sentenced to imprisonment, or simply to harass by multiplicity of trials. The state must prosecute in a single prosecution all offenses committed under the circumstances specified . . . The penalty for the failure to do so is that the state is thereafter barred from subsequently prosecuting for any such offense . . . All that is required is that the charges against the defendant, which are known to the proper officer of the police or prosecution and within the jurisdiction of the single court, be determined in a single rather than multiple trial . . ."

Petitioner here rejects the technical distinction between act and offense. It is clear that the Illinois courts have ambiguously dealt with the problems of this case in failing to set apart the question of multiplicity of trials, *State* v. *Roberts,* 170 La. 727, 129 So. 144 (1930) from the question of multiplicity of convictions or punishment, *Spannell* v. *State,* 83 Tex. Crim. 418, 203 S.W. 357 (1918). The "act-offense dichotomy" used in petitioner's case is the vice that destroyed the basis for federal constitutional protection. As a result petitioner was denied due process of law by subjection to multiple trials for the same alleged criminal conduct.

B. IT DOES NOT MATTER WHETHER THE CHARGES AGAINST PETITIONER WERE FOUR SEPARATE OFFENSES OR A SINGLE OFFENSE, THE GRAVAMEN OF PETITIONER'S COMPLAINT IS THAT THE STATE OF ILLINOIS DENIED HIM DUE PROCESS OF LAW WHEN IT SUBJECTED PETITIONER TO FOUR SEPARATE TRIALS UNDER THREE SEPARATE INDICTMENTS EACH ALLEGING THE MURDER OF ONE INDIVIDUAL, AND AT EACH TRIAL PETITIONER WAS CONFRONTED WITH PROOF THAT HE HAD MURDERED FOUR MEMBERS OF HIS FAMILY.

In the case at bar Petitioner was brought to trial on an indictment charging him with the murder of his son Vincent Frank Ciucci (R. "C.L." 2). When the trial began he made a motion to exclude all evidence or references to deaths other than the one which formed the basis of the indictment (R. 3-4).

In arguing the motion, counsel for Petitioner stated the reasons for the motion. He stated that he wanted to avoid continuous objections to evidence of deaths other than the one for which Petitioner was being tried (R. 16-17). The prosecution, on the other hand, insisted that the evidence was ". . . so interwoven by the circumstances as to be all logically a part of the testimony of each of the four. For that, only the defendant can blame himself as to the circumstances of the death of the four people . . ." (R. 11).

The prosecution then proceeded on that theory. The court, over objections of Petitioner, allowed in evidence proof that the defendant had killed his son Vincent for whose alleged murder Petitioner was being tried, and evidence that Petitioner killed his wife and two daughters (R. 111, 223-236, 278-290). In fact, the substantive criminal charge against Petitioner was that he had exterminated

his family (R. 30-31). By motion, Petitioner had alleged that the evidence and the facts upon which the instant indictment was based were the same as those in the prior two indictments under which he had been tried, convicted and sentenced (R. 2).

There was no denial of these allegations. In fact the theory of the prosecution agreed with Petitioner's contentions. There was no claim that the evidence submitted to the jury in the instant case was in any way dissimilar to the evidence that already had been submitted to the two previous juries (R. 9-14).

It is an elementary principle of criminal law that notice of specific charge and a chance to be heard in a trial of the issues raised by that charge are among the constitutional rights of every accused in a criminal proceeding. This court has said that there is no principle of procedural due process more clearly established than this one. *Cole* v. *State of Arkansas*, 333 U.S. 196, 201. It is obvious that there was no charge in the indictment that Petitioner had exterminated his family. It was as much a violation of due process for the trial court to find the Petitioner guilty on a charge on which he was never tried as it would have been for the trial court to have found Petitioner guilty upon a charge that had not been made. *DeJonge* v. *State of Oregon*, 299 U.S. 353, 362. *In Re Oliver*, 333 U.S. 257.

State law of evidence cannot take precedence over these fundamental constitutional doctrines. The prosecution relied on a rule of evidence pronounced by the Supreme Court of Illinois in *People* v. *Murphy*, 276 Ill. 304. The State of Illinois, however, has no power through its judicial proceedings, to impose upon Petitioner a rule of evidence which will deprive him of immunities granted him by the federal constitution. *United States ex rel. Collins* v. *Claudy*, 204 F.2d 624, 627.

The state court proceedings against Petitioner were the equivalent to a trial in which he was found guilty of a charge that had never been made against him. The evidence admitted against him proved a crime with which he had never been charged. The evidence was admitted to show that Petitioner had murdered four people. The indictment charged him with the murder of one. There was no process or notice by which Petitioner could tell he was going to be confronted with evidence of such an enormous crime. As a result, Petitioner was denied due process of law by denial of notice to him that he was going to be subjected to a trial on an accusation for the murder of four members of his family.

C. The Multiple Trials to Which Petitioner Was Subjected Deprived Petitioner of a Fair and Impartial Trial Because the Ability of the Petitioner to Meet and Defend the Charges Against Him Decreased as the Number of Charges Increased.

There were many unfair and prejudicial consequences from the multiple trials to which Petitioner was subjected in the case at bar. Only a few are needed as illustrations.

First, Petitioner could not testify on his own behalf. This is a different question than was presented in *Adamson* v. *People of the State of California*, 332 U.S. 46. Here there is no statute allowing comment on failure of the defendant to testify. Here is purely arbitrary state action on the part of an over-zealous state prosecutor. The court will quickly appreciate the fact that after Petitioner was found guilty of murdering his wife, testimony by him in the instant case would expose him to cross-examination that would have shown to the jury that he had been found guilty by

another jury for the same criminal transaction. The impact of this proof is plain.

Second, the multiple trials impoverished the Petitioner. This is shown by his request for appointment of counsel. The court did appoint counsel for Petitioner (R. 4-5).

Third, there was a long delay between the trial of Petitioner for murder of his wife in December, 1953 and the instant trial in January, 1955 (R. 1, 2-6). Time dissipates evidence.

Fourth, the multiple trials were practice grounds by which the method of obtaining the death sentence was devised. These were repeated trials after hearings free from error, *Palko* v. *Connecticut, supra. Brock* v. *North Carolina, supra,* Mr. Justice Frankfurter, concurring, 344 U.S. 424, 429. It is true reference was there made to acquittals. But this court has treated former acquittals as being on the same doctrinal plane as former conviction with regard to its meaning. *Ex Parte Lange,* 85 U.S. 163. Further, we can never allow it to be said that the acquitted have rights under our constitution that the convicted cannot enjoy. See, *Grant, Successive Prosecutions by State and Nation; Common Law and British Empire Comparisons,* 4 U.C.L.A. Law Rev. 1 (1956).

Finally, the form of state action to which Petitioner was subjected was arbitrary because it stemmed from the whims of an over-zealous prosecutor. Absent here is any statutory enactment guiding state policy. See: Appendices "A" to "F." It is evident that Petitioner was made the object of attack by the full panoply of state power without standards.

III.

When Considered in Its Entirety, the Case Made Out by Petitioner Is So Shocking in Its Consequences That It Presents a Departure From Fair and Orderly State Court Criminal Procedure Required by the Provisions of the Fourteenth Amendment to the Constitution of the United States.

A. A Fair Trial, Consistent With Orderly Criminal Procedure, Free From Bias and Hatred, Is One of the Guarantees of the Fourteenth Amendment to the Constitution of the United States.

This court has said that ". . . due process of law, as a historic and generative principle, precludes defining, and thereby confining, these standards of conduct more precisely than to say that convictions cannot be brought about by methods that offend 'a sense of justice' . . ." *Rochin* v. *People of the State of California*, 342 U.S. 165, 173.

It is true that the State of Illinois is free to regulate its criminal procedures in accordance with its own conceptions of policy; but it cannot do that which 'offends principles of justice' so rooted in the traditions and conscience of our people as to be ranked as fundamental . . ." *Snyder* v. *Massachusetts, supra.*

The action of the state prosecutor in electing to subject Petitioner to the multiple trials in the manner shown in this record offends principles of justice so rooted in the traditions of our people as to be ranked as fundamental . . ." It was capricious conduct on the part of one official. It was state action violative of the Fourteenth Amendment. *Brown* v. *Mississippi*, 297 U.S. 278; *Rochin* v. *People of the State of California, supra.* We need not

say whether there is here involved 'due process of law' or 'equal protection of the laws', even though these constitutional doctrines are not interchangeable. *Bolling* v. *Sharpe*, 347 U.S. 497, 499.

B. It Devolves Upon This Court to Review the Case Presented by Petitioner and Announce the Federal Constitutional Doctrines Applicable to Cases Like His as a Guide for Future State Court Criminal Proceedings.

It may be a form of flattery, but we do not believe this court granted certiorari in this and the companion cases merely to give current constitutional sanction to the "act-offense dichotomy" or affirm a federal base for the "same offense-evidence test." This case presents a kind of double jeopardy encased in arbitrary and prejudicial state action which violates the fundamental sense of decency in state court criminal trials. The extent to which the record purveys the federal constitutional questions for review, this court will determine. *Williams* v. *Georgia*, 349 U.S. 375. To the extent that this court finds the proceedings here involved depart from ". . . the basic requirements of orderly justice and hence due process . . ." this court will correct the judgment of the courts of Illinois. *Wolf* v. *People of the State of Colorado*, 338 U.S. 25; *Rochin* v. *People of the State of California*, *supra*.

Conclusion

For these reasons, it is respectfully submitted that the decision and judgment of the Supreme Court of Illinois be reversed, or in the alternative be reversed and remanded with directions.

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November 16, 1957

Appendix A

The following appeared in an article in the *Chicago Sun Times*, 4 star final edition, Friday, March 19, 1954, page 1:

Ciucci Gets 20 Years

Verdict Crumples
Murderer Of Wife

By Ray Brennan

A jury has convicted Vincent Ciucci of murdering his wife. His sentence was fixed at 20 years in prison. The verdict was returned at 9:15 p.m., Thursday in Criminal Court.

The term was within six years of the lightest sentence the jury could have voted on a guilty finding.

The minimum term for murder in Illinois is 14 years and the maximum is death in the electric chair.

The chief prosecutor, Samuel A. Papanek, immediately announced he believed Ciucci should be tried again— "and again and again and again, if needed."

State's Attorney Gutknecht announced previously he would settle for nothing short of death in the case.

If the jury let him off with

Continued on Page 2

anything less than the electric chair for the killing of the wife, Anne, 27, Gutknecht said he would continue prosecuting.

Appendix B

The following appeared in an article in the *Chicago American*, 4 star final edition, Friday, March 19, 1954, page 1:

Gutknecht
Hits Ciucci's
'Easy' Penalty

State's Attorney Gutknecht today blasted the verdict of a jury which sentenced Vincent Ciucci to 20 years for murdering his wife.

The State's Attorney declared:

"The verdict is a moral injustice to society when a man is guilty of killing his wife.

"To give a sentence like this, it's just like slapping him on the wrist.

"If a man who was guilty of killing his wife doesn't deserve death, than (sic) I don't know why he was being tried."

3 Trials Loom

Gutknecht said Ciucci will be tried on three indictments charging him with slaying his three children.

The Criminal Court jury never considered the death penalty, it was revealed to The Chicago American by a member of the jury which convicted the 28-year-old grocer.

The sentence, only six years more than the lightest punishment an Illinois jury can inflict on a murderer, stunned Assistant State's Attorney, Samuel A. Papanek, who had demanded Ciucci pay for the Crime with his life.

Second Trial

Papanek announced if the death penalty is spurned a second time, Ciucci will be tried for the third murder and, if necessary, for the fourth.

Three ballots were taken before the verdict and sentence were agreed upon, juror Maynard R. Bell, 52, of 9750 Woodlawn Ave., revealed.

Bell cast a guilty ballot each time, he said although "deep down in my heart I knew Ciucci did not kill his wife."

Appendix C

The following appeared in an article in the *Chicago Daily News*, Final Markets Red Streak edition, Friday, March 19, 1954, page 1:

Won't Rest Till Ciucci Gets Chair: Gutknecht

Goal Still Chair for Ciucci

Gutknecht to Rush His Next Trial

State's Attorney Gutknecht said Friday he won't be satisfied with anything less than the death penalty for Vincent Ciucci.

He planned to press for a speedy trial of the defendant on one of the other murder indictments.

Ciucci was given 20 years by a jury Thursday for the murder of his wife.

He is under separate indictment in the death of each of his three children—Vincent, Jr., 9, Virginia 8, and Angeline, 4.

Hence, he could be tried three more times.

* * * *

Gutknecht, displeased with the jury's fixing of 20 years, said:

"The jury clearly knew Ciucci was guilty. The crime was so horrible that despite the clear evidence they could not subconsciously believe it.

"The result was an irrational decision that only a Freud could analyze. Normal human beings find it hard to believe a crime of such utter depravity is possible."

Assistant State's Attorney Samuel Papanek, who had asked the death sentence for Ciucci, declared:

"Since this was a finding of guilty it should have been a more severe sentence."

Appendix D

The following appeared in an article in the *Chicago Sun-Times,* Sunday, March 21, 1954, page 22:

Did the Law Bungle
Ciucci Murder Case?

"Gutknecht (a Democrat) and McCarron (a Republican) had a political football game—but Ciucci was the only one who got kicked."

As a result of that argument, the jurors have said, they sentenced Ciucci to 20 years—only six years over the absolute minimum of 14 years for murder in Illinois.

On the first ballot, in fact, five of the 12 men and women voted to acquit him.

Gutknecht now has stated that he will prosecute Ciucci for the murder of the children—one by one to a total of three, if necessary—until he gets a death verdict.

But Toudor pointed out that the strongest case against Ciucci involved the death of his wife, for which Ciucci received a sentence which could terminate with a parole in less than seven years.

Appendix E

The following appeared in an article in the *Chicago Daily News,* Final Markets Red Streak edition, Thursday, July 29, 1954, page 1.

Ciucci Gets 45 Years
For Killing Daughter

Faces 2 more
Murder Trials

Jury Fixes Punishment;
Never Considered Death Penalty

Vincent Ciucci, 28, was convicted by a Criminal Court Jury Thursday of the murder of his daughter Angeline, 4.

His punishment was fixed at 45 years in prison. At an earlier trial Ciucci was sentenced to 20 years for the slaying of his wife Anne, 27.

CIUCCI will be tried for the murder of the two other children, said IRWIN D. BLOCH, acting State's Attorney.

"We are very disappointed, as we were in the first trial," BLOCH declared. "We are going to try the two other cases.

"Nothing short of the death penalty will satisfy the State and we hope to get a jury that will realize the magnitude of this crime."

The jury, which reached its verdict Thursday after being locked up over night, frankly called its decision a compromise.

Its foreman, WILLIAM M. MAYNER, 32, of 7932 A. Ridgeland, an Illinois Bell Telephone Company, employee, said eight ballots were taken.

* * *

THE JURY stood 9 to 3 for guilty on the first ballot, then agreed on guilt on the third ballot. Then wide disagreement resulted over the penalty, MAYER said.

The suggested punishment ranged from 14 to 199 years.

The electric chair was never considered, MAYER declared.

He said the seven women and five men felt it was mostly a circumstantial case, lacking direct evidence of guilt.

APPENDIX F

The following appeared in an article in the *Chicago Daily Tribune*, 3 star City Home edition, Friday, July 30, 1954, page 11:

VINCENT CIUCCI
GETS 45 YEARS
IN 2D MURDER

State to Seek Death in
2 Other Cases

The state will press its efforts to send VINCENT CIUCCI, 27, to the electric chair for the slayings of his wife and three children. Acting State's attorney IRWIN BLOCH announced yesterday after a second jury refused to inflict the death penalty.

Assistant State's Attorneys SAMUEL PAPANEK and JOSEPH T. McGOVERN, who prosecuted the second murder trial, were uncertain whether the state would proceed with the two remaining indictments. BLOCH, after conferring with them, left no doubt.

"We are disappointed," BLOCH said. "Nothing short of the death penalty is enough for CIUCCI. We definitely will try the other cases. We hope that some day a jury will realize the enormity of this crime. In this case there was the premeditated murder of a wife and three children."

Three Ballots on Guilt

WILLIAM M. MAYER, 32, of 7932 Ridgeland Ave., the foreman, was designated as the jury's spokesman. He said the jurors took three ballots to agree on CIUCCI's guilt and five more to decide on the punishment. None of the jurors, he said, favored the death penalty.

MAYER explained that while the jurors were satisfied that CIUCCI was guilty, they felt that it was not proper to impose the death penalty in a case based on circumstantial evidence. The jurors might have felt differently if there had been direct evidence, he added.

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FILED
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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

No. 157

VINCENT CIUCCI, SR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

PETITION FOR REHEARING OR MODIFICATION OF THIS COURT'S OPINION AND JUDGMENT

Certificate of Service Appended

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PETITION FOR REHEARING OR MODIFICATION OF THIS COURT'S OPINION AND JUDGMENT

Illinois respectfully petitions this Court to grant a rehearing in this cause, to remove the following language from the Court's opinion:

> "Mr. Justice Frankfurter and Mr. Justice Harlan, although believing that the matters set forth in the aforementioned newspaper articles might, if established, require a ruling that fundamental unfairness existed here, concur in the affirmance of the judgment because this material, not being part of the record, and not having been considered by the state courts, may not be considered here"

and to delete from its opinion and judgment of affirmance the language

> "with leave to petitioner to institute such further proceedings as may be available to him for the purpose of substantiating the claim that he was deprived of due process."

SUGGESTIONS IN SUPPORT OF THIS PETITION.

The Court's opinion intimates without declaring that in the view of Mr. Justice Frankfurter and Mr. Justice Harlan, "fundamental unfairness" may have existed in the petitioner's conviction because of "a number of articles which had appeared in Chicago newspapers after the first and second trials attributing to the prosecution certain statements expressing extreme dissatisfaction with the prison sentences fixed by the jury [in petitioner's previous trials for the murder of his wife and one of his daughters] and announcing a determined purpose to prosecute petitioner until a death sentence was obtained."

As the Court's opinion observes, "Neither these articles nor their subject matter is included in the record certified to this Court from the Supreme Court of Illinois," nor were they "considered by the State courts".

In *Brown* v. *Allen*, 344 U. S. 443, this Court said at page 486:

> "Failure to appeal is much like a failure to raise a known and existing question of unconstitutional proceeding or action prior to conviction or commitment. Such failure, of course, bars subsequent objection to conviction on those grounds."

The suggestion of Mr. Justice Frankfurter and Mr. Justice Harlan that "fundamental unfairness" may have "existed" because of the publication of these articles is thus addressed to a matter that if it has constitutional merit was waived. However, Illinois' earnest suggestion that

Mr. Justice Frankfurter's and Mr. Justice Harlan's intimation that "fundamental unfairness" may have existed is not prompted by the fact that it is only a *dictum* of two members of this Court.

All over the United States, prosecuting and other public officials denounce shocking crimes and announce a purpose not only to prosecute but to seek the death penalty or other serious sanctions against those charged with such crimes. If these utterances on the part of public officials are sufficient to vitiate subsequent convictions and ensuing sentences even though the accused made no objection to or at his trial on account of such publications—if, in short, convicted persons such as petitioner may speculate upon a favorable outcome notwithstanding such publications and if such an outcome does not eventuate, void their sentences years after their imposition, a situation grave indeed confronts virtually every court of criminal jurisdiction in the land.

The intimation that such publications may void convictions many years old, no point having been made of the publications prior to conviction, poses a question: What is to happen to the due and orderly administration of justice as justice has been traditionally administered in all of the forty-eight States?

It is impossible to overemphasize the moment of the expression of Mr. Justice Frankfurter and Mr. Justice Harlan in its portent in the field of criminal jurisprudence. Thousands of convictions may fall within the purview of the expression.

We respectfully suggest that no pronouncement of such scope as that of Mr. Justice Frankfurter and Mr. Justice Harlan should find utterance in this Court's opinions *except in a case where the question has been preserved and fully argued.*

Not only was the matter of newspaper publications in the instant case omitted entirely from the record in the State court, the presence of such a question was not indicated by the petition for *certiorari.*

We therefore respectfully ask this Court to delete from its opinion the expression of Mr. Justice Frankfurter and Mr. Justice Harlan and to excise from its judgment the language "with leave to petitioner to institute such further proceedings as may be available to him for the purpose of substantiating the claim that he was deprived of due process."

Respectfully submitted,

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Certificate of Service.

I, William C. Wines, one of the attorneys for respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that, on or before June 6, 1958, I served copies of the foregoing petition for rehearing or modification of this Court's opinion and judgment as follows:

By mailing three copies of said petition to

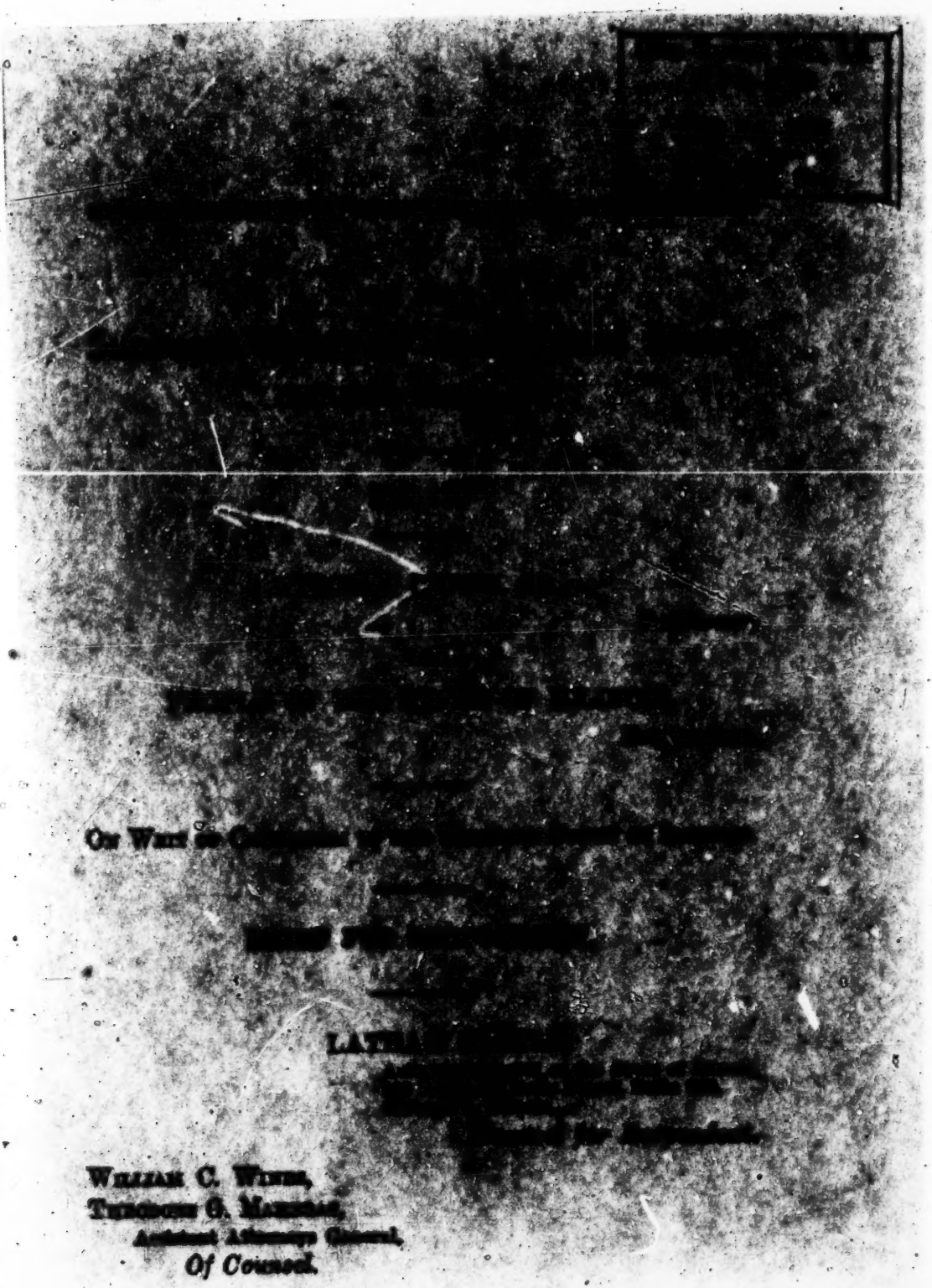
George N. Leighton and
Moore, Ming & Leighton
123 W. Madison St.
3rd Floor
Chicago 2, Illinois

in duly addressed envelope, first class, postage prepaid.

WILLIAM C. WINES,
One of Attorneys for Respondent.

I, William C. Wines, hereby certify that the foregoing petition is presented in good faith and not for delay.

William C. Wines.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 157

VINCENT CIUCCI, SR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

All of the facts relied upon by petitioner for reversal and by respondent for affirmance are stated in the unanimous opinion of the Supreme Court of Illinois.

Petitioner was charged by separate indictments with the slaying of his wife, and each, respectively, of their three children.

The Supreme Court of Illinois thus states the essence of the uncontradicted evidence: (*People* v. *Cuicci*, 8 Ill. 2d 619, at pp. 622-24)

> "The record shows that defendant, with his wife and their three children, lived in the rear portion of a brick

building. They operated a small grocery store in the front portion. At two o'clock in the morning of December 5, 1953, the building was discovered in flames. Defendant was observed in a crouched position inside the front door of the store portion, which had a glass panel, and two persons in the neighborhood broke the door and pulled him out of the burning building. Firemen later arrived and removed the bodies of his wife and three children, which were still lying in their respective beds. The bodies were taken to the county hospital, where they were pronounced dead. Upon removal to the morgue it was discovered that each had a hole penetrating the head.

"The day before the fire defendant had borrowed a .22-caliber rifle from a friend, stating that he wanted to go hunting for rabbits. After the fire subsided the rifle was found separated into its two parts in a kitchen wardrobe cabinet. Two days later police officers found several empty .22-caliber cartridge cases on the premises. Ballistic tests proved these to have been fired from the rifle borrowed by defendant. They also found portions of a sheet, a pillow slip and a pillow, all of which bore human blood stains, the latter also containing a bullet. Bullets were found in the brains of the wife and daughter, and the son's head contained a wound which an expert testified was caused by a bullet passing through the head from the right side and leaving the left side.

"For two or three years prior to the fire defendant had been acquainted with a 21-year-old girl named Carol Amora. In May, 1952, her father died leaving her an inheritance of $2300. From time to time she loaned defendant a total of $1300 of this to enable him to buy a car and pay debts. They began having sexual relations, and lived together for a time in a hotel. Defendant stated his wife would not give him a divorce but only separate maintenance. After Carol became pregnant by him, he stated he owed back 'alimony' to his wife, and could not afford to keep Carol with the baby coming in addition to his wife and three children. After the baby was born they resumed sexual relations, defendant expressing intentions of getting a divorce.

"On the day of the fire the defendant, while in the hospital, gave a lengthy statement to the authorities in which he related that on the preceding night his children went to bed about 10:30 o'clock, his wife retired at 11:30, and he went to bed a short time after midnight; that the next thing he remembered was a feeling of heat and shortness of breath; that the building was filled with smoke, causing him to gag for breath; that he called to his wife, leaped out of bed and tried to reach the telephone; and that he then ran through the store, banged on the front door and broke the glass.

"Defendant did not testify at the trial. Three witnesses were called on his behalf. Two of them testified defendant loved his son; and the third, a neighbor, testified that about two o'clock in the morning of December 5, 1953, he heard a loud booming noise and the shouting of people; that he looked toward the building in question and saw smoke and flames coming from it, and that he ran to the front of the building and helped pick up the defendant, who was lying on the ground half in the vestibule and half outside. No evidence was offered to dispute or explain the principal facts brought out by the evidence for the prosecution."

The instant conviction is for the killing of petitioner's
n Vincent, one of the children.

Dealing with petitioner's contention that his trial and
nviction in this case were barred by convictions in pre-
ous cases arising from the same fire, the Supreme Court
Illinois said (8 Ill. 2d 619, at p. 629):

"It is assigned as error that the court denied a 'motion to dismiss' on the ground of former jeopardy. Defendant had been tried and convicted in two previous trials for the murders of his wife and daughter respectively. He now argues that the two former prosecutions were for the same offense as the present one, and hence operate as a constitutional bar to this prosecution. The long-established test of former jeopardy, however, is whether the facts charged in the latter indictment would, if found to be true, have justified a conviction under the earlier indictment. (*People* v. *Allen*, 368 Ill.

368.) When this test is applied here it is obvious that under the indictment for murder of his wife a verdict could not be sustained finding him guilty of murdering his son. It is the identity of the offense, and not of the act, which is referred to in the constitutional guaranty against double jeopardy; and where two or more persons are unlawfully killed, even though by a single act, there is a corresponding number of distinct offenses. (*People* v. *Allen*, 369 Ill. 368.) In the case at bar not only were these separate offenses, but the acts themselves, *i. e.*, the shootings, were separate and distinct. There is no merit to the present contention."

Petitioner also complained that evidence of the deaths of his wife and other children, together with evidence that each of them had been shot through the head, was unconstitutionally admitted. The Supreme Court of Illinois held that evidence of these other deaths was admissible as part of the *res gestae*. (R. 368.)

Petitioner also contended that evidence of his illicit sexual relations with Carol Amora was prejudicially admitted. The Supreme Court of Illinois held this evidence admissible as tending to show a motive to dispose of petitioner's family.

> "No evidence was offered to dispute or explain the principal facts brought out by the evidence for the prosecution."

SUMMARY OF THE ARGUMENT.

I.

The separate prosecutions of petitioner for several deaths, inflicted by separate shots, even though the killings were virtually simultaneous, is in accordance with the well-nigh unanimous force of juridical opinion. Therefore such prosecutions do not offend "the very essence of a scheme of ordered liberty" or

> "violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Palko* v. *Connecticut*, 302 U. S. 319.

A jury may well deem the killing of a child a more serious offense than a killing of an estranged spouse and inflict a more serious punishment for such a killing.

II.

Neither authority nor practice supports petitioner's contention that he was entitled to a pleading apprising him that on his trial for one of the killings, evidence of the other killings would be offered. The contention raises at most a question of state evidence and practice in criminal cases.

ARGUMENT.

I.

The several prosecutions of petitioner for the alleged separate slayings of different individuals did not deny him due process of law.

In delimiting the questions raised and argued by petitioner, we note at the outset that

(1) This is not a case in which petitioner has been *acquitted* of other murders or crimes arising from the same transaction,

(2) Nor is it a case where two sovereigns seek to prosecute the same defendant upon the same or substantially the same factual complex,

(3) Nor is it a case in which different aspects of the same single criminal act are made the basis of different cumulative charges against the same defendant.

On the contrary, in this case four people were slain. Each of them was separately shot through the head. Although all of the victims perished in a single fire, this is not a case in which a single fire was the sole cause of the deaths of more than one person.

This is a case in which four people were shot to death in separate although consecutive acts.

The principal and we believe the only serious question presented is whether Illinois denied due process in prosecuting petitioner separately for each of these several and distinct homicides.

Mindful that this Court's grant of *certiorari*, although intimating no decision on the merits, imports the presence of a question of such gravity as to require measured consid-

eration of the issues propounded, we cite the following authorities, not as conclusive precedents, but as demonstrating that petitioner's separate trials for separate homicides do not offend "the very essence of a scheme of ordered liberty" or

> "violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental' ". *Palko* v. *Connecticut*, 302 U. S. 319.

Flemister v. United States, 207 U. S. 372.

In the *Flemister* case, the accused was convicted of a criminal attempt against a public official by striking one Feliciano Celimin, a policeman, and by using vile, abusive and threatening language to him, contrary to an applicable provision of the Penal Code of the Philippines.

He pleaded in bar the fact that he had been convicted of similarly assaulting another public official, one Domingo Salvador, on the same occasion.

Mr. Justice Holmes, writing for a unanimous court, said at pages 374-5:

> "The only assignment of error that needs a word is that which was intended to rely upon a previous conviction that was pleaded and put in evidence. This was a conviction by a municipal court of a violation of ordinances of the city of Manila by disorderly conduct, a breach of the peace, and the assault upon one Domingo Salvador at the same time and place as the assault alleged in the complaint before us. Perhaps it should be added that a second complaint under the ordinances for slanderous, threatening and abusive language to Captain José Crame of the Manila Police Department was dismissed by the municipal judge on the ground that the offense could not be split up. *None of the acts alleged in these complaints was the assault upon Celimin*, relied upon in the present case, and it does not appear that the assault upon Celimin was relied on or proved as part of the disorderly conduct for which the plaintiff in

error was punished in the municipal court. It is unnecessary to consider whether the same conduct could be punished at the same time on the same grounds by both a superior and subordinate authority in the same jurisdiction. *There is nothing in the Philippine bill of rights that forbids assaults on two individuals being treated as two offenses, even if they occur very near each other in one continuing attempt to defy the law.* We cannot revise the finding of the courts below that the two offenses were distinct." (Emphasis supplied.)

Hotema v. United States, 186 U. S. 413.

The *Hotema* case, cited above, is very much in point.

In that case the defendant was indicted for the killing of three persons upon the same day. Upon consolidated indictments for two of the slayings, he was found not guilty by reason of insanity. On an indictment for the third slaying, he was found guilty.

He filed a plea of "once in jeopardy".

A unanimous court rejected the plea as "wholly without merit."

Badders v. United States, 240 U. S. 391.

The defendant was convicted upon 7 separate counts, each charging the mailing of a different letter in pursuance of a single scheme to use the mails to defraud. It is held that the offenses were separate and that each was distinctly punishable.

It is true that in the *Badders* case the seven separate prosecutions occurred in a single trial. Standing alone, the *Badders* case is not directly in point upon the question of multiple trials for simultaneous offenses, but when read in connection with the *Flemister* and *Hotema* cases, both cited above, it, too, represents this Court's holding that

separate offenses may be separately prosecuted and separately punished even though they are contemporaneous.

Petitioner has conceded that by the weight of the authority, the killing or injuring of two or more people by a single criminal mismanagement of an automobile results in several separately punishable offenses. In addition to *People* v. *Allen*, 368 Ill. 368, cited by the Supreme Court of Illinois in the instant case, see *Fleming* v. *Commonwealth*, 284 Ky. 209, *Commonwealth* v. *McGuire*, 313 Mass. 669, *State* v. *Fredland*, 200 Minn. 44, *Fay* v. *State*, 62 Okla. Crim. 350, *Lawrence* v. *Commonwealth*, 181 Va. 582, and other cases cited at 172 A. L. R. at page 1062.

A prosecution that is in accordance with the weight of judicial authority, even though that authority is represented by pronouncements of courts other than this Court, can hardly be so shocking as to deny due process of law.

Petitioner contends at least by strong inference that even if he was subject to separate punishment for each of the four homicides with which he has been charged, he should be prosecuted in a single case and not in separate trials.

We do not deal in this case with a situation in which a defendant has been *acquitted* of other offenses under such circumstances that if he has committed one of the offenses, he must have committed all of them. Such a situation is now under this Court's advisement in *Hoag* v. *New Jersey*, No. 40 to this Term. In the *Hoag* case, several men were robbed in a tavern by a single assailant. Hoag is accused of being the assailant. He was acquitted for the robbery of one of the victims but was subsequently convicted for the robbery of another victim. He either robbed all or none of the victims. Retrial after an *acquittal* of an alleged crime against one of several victims raises a question very different from that presented in this case.

Ciucci has been convicted of killing his wife and one other child. Since he does not assail the first of these convictions, Illinois may without denying due process declare that one who has been found guilty of one of several virtually simultaneous murders must suffer separate trials and separate punishments for the others of such murders.

Petitioner makes much of the fact that the present conviction carries with it the sentence of death, whereas the earlier convictions resulted only in sentence of imprisonment at the jury's hands. But a jury may well impose the death penalty for the murder of a child and a lighter penalty for the murder of a wife from whom a husband is estranged. It is neither for us nor for this Court to say that in imposing a greater penalty for the murder of a child, than has been imposed for the murder of a wife, the jury acts as an instrument of denial of due process.

In each of the following cases it has been declared that the Federal and State governments may separately prosecute upon the same state of facts. Recognizing that the instant case is one in which the State has conducted consecutive prosecutions for separate killings, we nevertheless deem these cases pertinent as evincing the principle that multiple prosecutions arising from a single set of facts do not in general deny due process where the same sovereign does not subject the same individual to a series of prosecutions arising from the same facts upon the same charge:

Moore v. Illinois, 55 U. S. 18.

In this case the Court sustained prosecutions by Illinois of a citizen who contended that Illinois' prosecution might be inconsistent with the subsequent Federal prosecution upon the same facts.

Fox v. Ohio, 46 U. S. 410.

In this case this Court held a defendant amenable to State prosecution although the same facts would render him vulnerable to a Federal prosecution, the State prosecution being for fraud and potential Federal prosecution being for counterfeiting.

United States v. Lanza, 260 U. S. 377 and Herbert v. Louisiana, 272 U. S. 312.

In these cases, this Court held that a defendant was subject to prosecution by both the Federal and a State government as a result of the same illicit dealings in intoxicating beverages.

Gavieres v. United States, 220 U. S. 338.

In this case, the accused was separately prosecuted for intoxication and for slandering, the two prosecutions arising out of precisely the same conduct. This Court perceived no double jeopardy.

The foregoing authorities, which are examples of hosts of similar cases, attest the truth that several punishments, even several separate prosecutions, for different criminal acts arising from the same or immediately related transactions, do not offend the conscience, traditions or sense of justice of the American people.

Therefore petitioner was not denied due process of law by the prosecution and conviction of which he complains in this case.

II.

Due process did not require that any previous allegation that evidence of other contemporaneous murders would be admitted against petitioner.

Petitioner cites and we have found no authority, nor are we aware of any principle of jurisprudence, that would require Illinois to charge in the indictment or otherwise admonish that upon the trial for the murder of his son Vincent, the State would offer evidence of the deaths of his wife and two other children, which deaths occurred contemporaneously with that of Vincent.

Petitioner does not appear to have made any motion for a bill of particulars.

Petitioner's argument proves too much; for the same logic would require the State to make discovery in the indictment or other pleadings of all acts, whether themselves criminal or not, of which it was intended to offer evidence at petitioner's trial.

No authority supports petitioner's contention. The universal practice is contrary to that contention.

Indeed, charging in an indictment that petitioner had murdered other persons at the same time might if evidence of such charges were not forthcoming in itself be prejudicial.

We submit that a State does not offend "the very essence of a scheme of ordered liberty" or

> "violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,"

when it separately and severally punishes four distinct homicides, each accomplished by a separate shooting.

The overwhelming weight of juridical opinion is to this effect.

In *Ebling* v. *Morgan*, 237 U. S. 627, this Court held that each of several successive but felonious cuttings of several mail bags might be punished separately. To be sure, in the *Ebling* case, there was a single prosecution, the defendant having been separately charged in several counts of the same indictment. But the principle of multiple prosecutions for multiple several although virtually simultaneous offenses is equally clear, as appears from *Flemister* v. *United States*, 207 U. S. 372, cited and considered above, where the prosecutions were separate.

Even if the instant case were one of technical jeopardy, which of course it is not, the Fourteenth Amendment does not categorically interdict several trials even for the same identical offense. In *Palko* v. *Connecticut*, 302 U. S. 319, this Court dealt with the constitutionality of a statute of Connecticut which permitted appeals and retrials at the instance of the State even after a judgment of acquittal. Palko, charged with murder in the first degree, was found guilty of murder in the second degree, which verdict operated as an acquittal of the greater offense, and sentenced to prison for life. Upon appeal by the State under the statute above noted, a new trial was awarded for errors in excluding testimony as to a confession, in the matter of cross examination and with respect to instructions to the jury. Upon retrial after timely plea of double jeopardy and invocation of the Due Process Clause, Palko was again convicted, this time of murder in the first degree, and a death sentence was imposed.

This Court affirmed in the historical opinion delivered by Mr. Justice Cardozo. Speaking of petitioner's second trial and conviction and summing up its conclusions, the Court said at page 328:

> "Is that kind of double jeopardy to which the statute has subjected him a hardship so acute and shocking that

> our polity will not endure it? Does it violate those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions?' "

In the *Palko* case this Court declared in measured terms that double jeopardy, even when it exists, in the true and literal sense of the term, does not so far offend traditional "concepts of ordered liberty" as to deny Federal due process.

Conclusion.

We respectfully submit that the judgment of the Supreme Court of Illinois should be affirmed.

Respectfully submitted,

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